Q. You do recall being on that? A. That is right, yes, I was a member of the Council at that time.

Q. Have you ever gotten together with other persons in Oregon, other doctors, to restrain trade in prepaid medical care work, or to monopolize that work? A. No.

Q. I believe you stated you became a member of the Multnomah Industrial Health Association? A. Yes. I don't remember the year. It was at the beginning of the thing and I remained in until I resigned, without ever
1839 having seen a patient.

Mr. Marcus:

Q. Doctor, I am reading from Plaintiff's Exhibit 216, which is the preliminary agreement signed by physicians starting the Multnomah Industrial Health Association, and there is this clause:

"When preliminary organization of said corporation is effected, each of the undersigned agrees to enter into, with the corporation, and as a condition precedent to receiving the stock by him subscribed for hereby and/or the voting trust certificates above specified, a binding contract that he will not engage himself as a physician or otherwise enter the employ of any other hospital association; until said contract is executed this writing shall be regarded as a binding agreement to that effect." A. Well, I made that agreement with myself long before that, so it didn't make any difference to me.

Q. It didn't make any difference to you that you entered into this because you did it anyway? A. Yes.

Q. But you did enter into this? A. Yes, I did temporarily, until I disagreed with their policies and withdrew.

Q. Now, Doctor, it is true, is it not, that you have been quite active in medical society affairs? A. Yes, particularly in the National affairs.

Q. And also in the affairs of the State Society?
1840 A. Well, that has been gradually a diminishing thing because the National job has taken so much of my time that sometimes I attend the State meetings maybe every three months or something of that sort.

Q. But, that has been true I suppose in later years? A. Yes. As the load has increased, why, I have had to take less part.

Q. And you had, of course, something to do with the formulation of policies of the State Society with respect to prepaid medical care and relations of the members of the Society with hospital associations? A. Well, I think about

all that I have had to do with it has been the continual demand that the ethical requirements be lived up to. Not being interested in participating in it myself, I have tried to see that the necessary restrictions have been placed upon the organization so that they would be kept in line from the professional standpoint and safeguard the patient ethically.

Q. Well, I suppose you construed the principles of medical ethics to mean that these hospital associations do not come within those principles and any doctor associating with those hospital associations? A. You mean the lay-operated ones?

Q. What? A. The lay-operated associations?

1841 Q. Yes. A. Yes.

Q. It is true, isn't it, Doctor, that you took a very active part in having the Society go after these violators of medical ethics, that is in so far as the doctors are concerned, and also as to the lay hospital associations? A. Well, I think at that time that the situation was part of a general trend toward housecleaning. This matter of contract practice was part of it. For a number of years before the medical profession had been cleaning house in a great many ways. For instance, the College of Physicians and College of Surgeons were fighting unethical practices such as fee splitting. They placed requirements on hospitals that in order to be approved they have pathology laboratories to check every surgical specimen that was removed to make sure that the surgeon was removing what he went in for and to check on the quality of the work, and so on, and all of this was part of this general trend to improve medical service and improve ethics at the same time, and I did have an active part in it.

Q. And you did have an active part in having the Society apply the principles of medical ethics even to the extent of expelling members from the Society in as far as these members associated themselves with the hospital associations? A. No, I can't say that. That was a job that was left up to the grievance committees and the boards of censors

1842 and the councils of the county society.

Q. Well, Doctor, I am reading now from Exhibit 292, which is the minutes of the Council of the Oregon State Medical Society for February 3, 1936:

"Dr. Fitzgibbon stated that practices in violation of the principles of medical ethics had sprung up in so many localities of the state that the problem of enforcement

was clearly a matter for consideration and action by the State Society and that the employment of legal counsel was a necessary step in taking sound action.

"Dr. Fitzgibbon stated that the position of the Council concerning the widespread violations of the principles of medical ethics should be clarified and that a definite statement of policy should be formulated and sent to all the component societies."

Now, Doctor, do you recall drafting such a statement? A. If I didn't, I should have, because that is the way I felt.

Q. And you probably did draft that statement? A. Yes.

Q. And that statement was sent to the members of the Society? A. I imagine so. I don't know.

Q. Well, does that refresh your recollection as to whether you took an active part in getting the Society to take action against these members of the medical profession who were — A. Well, I think that might bear that label.

1843 Q. I better complete my question and see whether your answer is the same. Members of the medical profession in the State who had been associating themselves with these hospital associations? A. Well, it was a matter —it wasn't only hospital associations. It was only part of the problem.

Q. You didn't like prepaid medical care organizations, did you? A. No. You are bringing up another angle, because, after all, I have been interested in this insurance thing for many years and I have been urging and promoting ethical prepaid medical care.

Q. And you think that cooperative groups which want to have prepaid medical care plans are unethical? A. Well, at the Atlantic City meeting of the house of delegates in June, at the American Medical Association, we set down twenty principles covering cooperatives and they can be lived up to and be approved.

Q. Which year? A. This year.

Q. I could go into that at some length, Doctor, but that doesn't involve this case.

Mr. Jaureguy: Are you threatening him?

Mr. Marcus:

Q. Now, Doctor, it is true also, is it not, that at times you brought officials of the AMA to the State Medical
1844 Society to talk on contract practice of medicine? A. The American Medical Association has an unwritten rule that no official will enter any state or attend any State

Society meetings without an invitation from the State Society, so—will you give me an inkling of just what you are thinking about so I can—

Q. Well, I understand that Dr. Leland was down here in those days talking about contract practice of medicine, and Dr. Fishbein was down here, and perhaps some others. A. As I recall, Dr. Leland was brought here—I believe the Society requested him to come and attend some conference on prepaid medical care. I don't recall. Fishbein was sent here at the request of the Society. I was instructed to ask the Board of Trustees, to invite the Board of Trustees, to make it an invitation, to send Dr. Fishbein here in 1936 to attend a meeting of the Multnomah Society, and they granted that request and he came.

Q. You were also instructed during this period by the State Society, were you not, to press for the passage of a resolution by the American Medical Association to make it a violation of medical ethics for hospitals to take the patients of doctors who had secured their patients in an unethical manner? A. I think you have distorted it. I believe you better read the resolution.

Q. Well, if you recall what that resolution was,
1845 Doctor, go right ahead. Do you recall what it was?

A. Yes. That was a resolution directed to the house of delegates of the American Medical Association requesting the Council on Medical Education and Hospitals to consider removal from the approved list for internships and residencies hospitals in which unethical medicine was being practiced. Now, the hospitals that are on the approved list are teaching institutions, and we felt that training the young man in medicine in unethical practice was a deleterious thing and something should be done about it, and I was entirely in sympathy with this resolution.

Now, to understand what that means—may I go on and explain what it means—in order to bring a problem of that kind before the Council on Medical Education and Hospitals, first of all it would be necessary to have the county society and its board of censors and others concerned prove the unethical practice taking place in those hospitals. To go through all of the necessary intermediate steps in the way of conciliation and so on, and then appeal to the State Society, and from then to the Judicial Council, and then, as the resolution was written and approved by the house of delegates, the Council on Medical Service would be authorized to make such a removal. It has never occurred as far as I know.

Q. Doctor, you were in court this morning and I think you perhaps heard me ask Dr. Baum about the Pacific
1846 Coast— A. Executive Conference?
Q. Yes. A. Yes, I did.

Q. You have been a representative of the State Society to that conference, have you not? A. I think so. That was started at the suggestion of Dr. Fred Wornzeiss, who was then secretary of the California association, and I believe the first meeting was held in San Francisco and then there was one in Portland, and perhaps one subsequent one. I think they had maybe three or four meetings to which the officers and representatives of the three state societies—I guess Idaho was included—were invited.

1847 Q. Now, Doctor, I assume it is true, is it not, that you would report back to the State Society what occurred at the meetings of the American Medical Association and would in general keep them advised? A. When I was a delegate, yes. Now, no.

Q. Now, Doctor, I believe you stated you were a participating physician with the Oregon Physicians' Service? A. Yes, since the war.

Q. And you know about these smaller local plans, too, do you not? A. I don't know much about it. I became involved in this thing through my participation in this War Community Health Committee which had this problem of the increased population and shipyard workers to handle, and we were seeking for a solution to that, and we got involved with this Vanport Hospital and so on, and I know more about that than any other phase of it. I have never been to an OPS meeting. I don't know very much about it.

Q. Well, while you were on the Council of Medical Service did these various doctor-sponsored plans in the different states supply the Council with information as to the nature of their plan and did that include Oregon? A. Yes, yes. The idea was—in fact, my idea when I was Chairman of the Council was to try to get these people together so they could discuss their headaches and find some solutions
1848 to some of their problems, and during that period we were also attempting to interest insurance companies and others concerned with this type of coverage to expand their type of coverage and make it possible for more people to get protection. It was a very difficult job. Insurance people, as you know, are inclined to be actuarially sound and sit very close to their chips, and it has been hard to pry them loose, but they are coming over gradually.

Q. Doctor, you have also had occasion to speak before

various local or various county medical societies with respect to prepaid medical care problems. A. That would be pretty hard for me to answer. I have spoken here and there and around the country, and if you have some minutes or something that will help jog my memory—

Q. Well, you have spoken to county medical societies in Oregon, have you not? A. I can't think of any specific time or place. Perhaps I have. We had regional meetings of the Council of Medical Service here in the Northwest to which people were invited from all over the area, and I don't know where and when I have spoken.

Q. Now, Doctor, I got a little confused when you talked before about not accepting tickets and not accepting checks and being framed. Were you afraid if it became known that you did any of these things with respect to the hospital associations that it would get you in bad with the Medical Society? A. No. It was just that I didn't want to
1849 participate in any way in a thing in which I disapproved. Now, I realize it seems foolish to reject an endorsed check, whether it may come from the Devil himself. But that was the way I felt about it. I want to deal with my patient as a private patient and that is the way I tried to operate it. And when, of course, it went around that Mr. Bechtold was exhibiting checks with doctors' endorsements I told my secretary not to take any checks from any of these outfits.

Q. And you felt the same way about giving itemized statements? A. No. We have done that. If a patient asks for an itemized statement—any patient is entitled to an itemized statement. Any patient is entitled to a report.

Q. Do you remember treating a Mr. Clarence Weberg in 1947? A. No. Where was he from?

Q. Portland Woolen Mills. A. No.

Q. You don't recall whether in his case you refused to give an itemized statement? A. No, I don't remember him at all. Was it some patient I saw myself, do you know?

Q. Well, this is merely a memorandum in which this man says that you told him you would give him no information whatever for the association as the association was not an ethical institution.

1850 Mr. Jaureguy: Is that Weberg's memorandum—oh, Page's memorandum of the National.

Mr. Marcus:

Q. Did you say, Doctor, that after you ceased being a delegate you did not tell the State Society about American

Medical Association activity and policy? A. Oh, at various dinners and things I have been asked to get up and sing my song. I haven't any particular recollection of where or when. Annual meetings, usually, and places like that.

Mr. Marcus: That is all, Doctor.

Mr. Jaureguy: There is one thing I mentioned on direct I would like to take care of now, and it will just take a moment, I think.

Redirect Examination

By Mr. Jaureguy:

Q. I want to hand you Defendants' Pre-Trial Exhibit 2752 and ask you whether that speech that is set forth there was delivered by you at the time and place. A. Yes. This was in Washington, D. C., in 1944.

Q. And did you hold those views at the time you made the speech? A. I certainly did.

Q. And do you still hold them? A. I do.

Q. Now, I am also handing you Defendants' Pre-
1851 Trial Exhibit 2753.

Mr. Marcus: With all due respect to Counsel, I don't recall seeing any magazine.

Mr. Jaureguy: It was in there when you got it. It was in the same file and same shape as when delivered to you.

For the record we will state the only portion which we are offering is the article starting on Page 20, along with the portrait, picture of Dr. Fitzgibbon, and ask you whether you wrote that article.

Mr. Marcus: I have just been informed by my colleague that we never got that, so far as the exhibits are concerned. I do know that I have not seen that.

A. Yes.

Mr. Jaureguy: It is all right. You will have a chance to see it, certainly. Did you see this? They are in that file that you can have any time.

A. That one that Mr. Marcus has, you may have it in some other form. It was published first in the Annals of Medicine in Washington, D. C., and then later by the Tennessee Medical Association Journal, and then Oregon Physicians' Service put it out in a brochure that they published in those days.

Mr. Jaureguy:

Q. I will ask you whether the article you wrote in No. 2753 sets forth your views as you had them at that time? A. Yes, sir.

Q. And do they still express your views? A. Yes, 1852 certainly.

Q. Now, you have said that the lay associations as they were operated at a period of time, in the '30s, were unethical. Do you know whether or not their method of operation has changed in the meantime? A. I have been told that they are posing as insurance companies now.

Q. And do you have any objection to indemnity contracts by corporations? A. Well, it depends. Now, an insurance company is one thing and a hospital association is another. A hospital association, as I understand the law—I haven't read it—but, as I understand it, is licensed to practice medicine, and they actually have men in there who are their employes who are practicing medicine and who do a certain amount of supervising and steering of patients and that sort of thing, and I have told some of these men in these associations that as far as I was concerned—we have been very friendly—there isn't a man in this whole picture that I have any animosity towards—and we have had discussions of one kind and another, and my whole attitude has been that if they become insurance companies, pure and simple, more power to them.

Q. That is, if they write contracts where the patient can choose any doctor that he wishes, and then is indemnified? A. Yes, a reimbursement type of insurance; 1853 perfectly all right.

Mr. Jaureguy: That is all.

Mr. Marcus: I don't want to keep you. Just on the bare chance I might want to ask you something, would you be willing to come back sometime within the next two weeks?

The Witness: I leave for Chicago on the 7th. Any time before that that I can work it in will be fine.

(Thereupon, at 4:30 o'clock P. M., an adjournment was taken until 10:00 A. M., Tuesday, January 31, 1950.)

1854 Court reconvened at 10:00 o'clock A. M., Tuesday, January 31, 1950, pursuant to adjournment.

DR. MAX WILLIAM HEMINGWAY was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. What is your name, please? A. Max W. Hemingway.

Q. Where do you live, Doctor? A. Bend, Oregon.

Q. You have lived there how long? A. Since 1935, with the exception of the war.

Q. Where were you before that? A. My home was in Wisconsin.

Q. What is your business or profession? A. I am a physician.

Q. You have been practicing how long? A. Since 1935.

Q. At what medical school did you get your education? A. Went to the Medical College of the State of South Carolina.

Q. Did you have any postgraduate work or internship?

A. Yes, I was in the Department of Physiology for
1855 three years and I had medical service at the University Hospital in St. Louis.

Q. Then did you go direct from there to Oregon, to Bend? A. That is right.

Q. And you have been practicing there ever since? A. That is right.

Q. Are you a member of any medical society or societies? A. Yes, I belong to the county and state and national—American Medical Association, American College of Physicians, American Diabetic Association, a member of the North Pacific Society of Internal Medicine, a fellow of the American Heart Association, associate of the Association for Clinical Research.

Q. In Bend have you practiced alone or are you associated with others? A. I am associated with a group of the doctors.

Q. Do you have a name, a clinic name? A. The name is the Robert Hemingway Memorial Clinic.

Q. That is named after your brother? A. Named after my brother Robert.

Q. Then you have practiced in Bend since 1935? A. That is right.

Q. Did you say you were gone for some time? A. I was gone during the period of the war; returned in 1945.

Q. When did you leave? A. Left in 1941.

1856 Q. What branch of the service were you in? A. I was in the Medical Corps.

Q. Have you ever held any office in the Medical Society? A. I was president of our local county medical society one year.

Q. When was that? A. That was in 1946. I have been a member of the State Medical Council since that time.

Q. Since when? A. Since 1946.

Q. Have you held any office with OPS? A. Yes, I am a trustee of OPS.

Q. How long have you been a trustee of OPS? A. Since 1946.

Q. Have you attended meetings of the Council of the State Medical Society regularly? A. Fairly regularly, yes.

Q. And meetings of the OPS trustees? A. Yes.

Q. At any time, at any meeting of the Council, has there been any proposal to endeavor to induce doctors not to take tickets of hospital associations? A. I have never known of an instance of that kind.

Q. Or at any OPS meetings has there been any proposal that OPS endeavor to induce doctors not to take
1857 tickets of hospital associations? A. I never heard—never have heard such a declamation at any time.

Q. During the time you have been practicing,—that is, since 1935,—has the local society ever endeavored to induce doctors in your district not to take tickets of hospital associations?

Mr. Marcus: I object to that, your Honor, on the ground that this witness cannot answer such questions without going into matters he can have no personal knowledge of.

The Court: He may answer.

A. Will you state the question again?

Mr. Jaureguy:

Q. Has any medical society, to your knowledge, ever tried to induce doctors in your county not to take tickets of hospital associations? A. I don't recall of any such instance.

Q. Has any doctor purporting to represent any medical society ever endeavored to induce doctors in your county not to take tickets? A. Never to my knowledge.

Q. Have any doctors from the Medical Society or from OPS ever visited Bend to talk to the medical society there? A. Oh, yes, on several occasions.

Q. Could you give us the names of any of those doctors? A. Well, we had—Mr. Marshall was down there and some

of the members of the directors, Dr. Spalding, and
1858 then Dr. Gordon Leitch was down, and they met
with us shortly after we all returned from the war, to clarify the position of OPS and so on and to get acquainted with all the doctors. Then there was a meeting earlier than that, at which time I think Dr. Besson was down, and there might have been others that I do not recall. We have a representative, an agent, for OPS who comes in and out of there, who came in and out of there, and now we have one that makes his home there, and of course we see him fairly frequently.

Q. As a trustee of OPS, would you tell us whether or not there is any desire on the part of the trustees of OPS, as far as you know, that OPS should become a monopoly.

Mr. Marcus: I object to that, your Honor, on the ground it calls for a conclusion.

The Court: He may answer.

A. Will you state the question again?

Mr. Jaureguy:

Q. The question was whether there is any desire on the part of the trustees of OPS or on the part of OPS that OPS should become a monopoly? A. Oh, definitely not any desire, nor their ambition.

Q. Why is that? Will you explain your own views on the subject? A. As a trustee of OPS, we do not feel it is a good thing for us to have a solid monopoly. We feel that competition is good. Like any other insurance, you would be covering bad losses otherwise; so we do not feel it would be a healthy thing to have OPS be the only insurance carrier in this state. We think it would be a
1859 very bad thing. We welcome competition, as far as I am concerned.

Q. What has been the practice of yourself and the doctors of your clinic, and of your clinic as such, as to whether or not it has been taking tickets of hospital associations since 1935? A. We take them all. We take all tickets.

Q. Has that been uniform and continuous since 1935? A. Yes, with one exception. There is a local hospital in my town whose tickets—we are not on their panel, in other words, not on their panel of physicians.

Q. That is the Lumbermen's Hospital? A. That is the Lumbermen's Hospital.

Q. They have their own hospital, I think the evidence indicates. A. That is right.

Q. It is a little different type of organization than the others, I mean as far as care of members is concerned? A. Yes, it is entirely a local thing. They take care of their own, give medical and surgical care only to their own employes, not the employes' families, but just entirely to the employes.

Q. That is, the employes of the two lumber mills? A. The two lumber companies, that is right.

Q. Formerly did you and the doctors of your clinic aid in taking care of these employes in that hospital? A. Yes. When we returned from the war we took care of them for, I think, one or two months, and then we
1860 left after that. There were some three doctors of our clinic that were not in the association with us at that time, and so they never have taken tickets or worked with these mills, but my brother and I, who were in partnership prior to the war, accepted tickets all the time.

Q. The reason for not taking tickets of this association or taking care of the employes of those two mills, was that some reason that was peculiar to that one situation? A. That is entirely quite so. The reason we did not continue on their panel after that is because we did not feel that we could practice in the manner in which we were accustomed to practice and desired to practice. It was purely a matter of operation of a hospital, nothing else.

Q. Did any medical society ever have any influence on you in reaching that conclusion? A. None at all. As a matter of fact, they were in the opposite direction. They are continuing to take care of them.

Q. You say you take tickets of commercial hospital associations. Which ones do you take tickets from? A. We take care of National Hospital Association and Industrial Hospital, and of course the Veterans Bureau, but that is not a hospital association. Oh, I believe that is all that are operating in Bend. On occasions we take care of those associations, other state associations for instance, the Cali-
fornia Physicians' Service, and so on. We are affili-
1861 ated with and accept tickets from the Klamath Medical Service and so on.

Q. You mean the other doctor-sponsored associations? A. Yes.

Q. What about OPS? A. We accept OPS, of course.

Q. Taking tickets from commercial hospital associations, does that involve work in your office in addition to what you would do to bill the patient directly? A. It creates a considerable amount of work. It throws a tremendous

load not only on the doctor's time, as to preparation of reports, but also entails the time of an extra clerk, which is necessary if you have any amount of business to transact, in order to fill out these reports.

Q. You have to have an extra clerk in your office for that purpose? A. That is about what it amounts to.

Q. How many doctors are there in your clinic? A. There are six.

Q. Give us their names? A. There is Dr. Rademacher, Dr. Bradford Pease, Dr. Lorance B. Evers, Dr. Richard Robinson, Dr. Courter and myself.

Q. You say there are some forms to be filled out? A. there are for these—each insurance carrier requires a different form, probably. Some of them are quite a nuisance.

The forms for the National Hospital Association
1862 are exceedingly top-heavy because we give one report, and then, if we do a complete examination, we have to submit more reports; and so it takes at least two or three reports, at least, to wind up a case for them. It increases the time consumed by the physician as well as that of the office personnel to prepare these reports.

Q. What has been your experience with the National Hospital Association with respect to the matter of fees? Do you have any difficulties or differences there?

Mr. Marcus: Your Honor, I would like to move to strike out all the testimony with respect to this doctor's experience with commercial hospital associations on the ground it is incompetent, irrelevant and immaterial.

The Court: Motion denied.

Mr. Jaureguy:

Q. The question is whether you have had any difficulties or differences with National on account of fees? A. It has not always been very satisfactory. Their fees, to begin with, are substandard fees compared to OPS, which in our opinion, has an acceptable average fee. We have had trouble. When we submit bills to these carriers,—to this carrier, particularly,—sometimes they won't pay it back to us in the form in which it has been submitted, even though it conforms to their given fee schedule. It entails considerable correspondence back and forth to try to straighten
that out. That has happened quite a few times.
1863 Q. What about the other doctors in Bend? Do you know whether they take tickets? A. I am sure they all do. They take tickets of all organizations.

Q. Does that include Dr. Vandevert? A. I believe so. I am quite sure about that.

Q. Has that been ever since you started there in 1935? A. To the best of my knowledge, he has always accepted all tickets.

Q. What about the other doctors? A. Similarly so.

Q. Is Deschutes County a part of the state pool or is it a local pool? A. No, we have—in reference to the OPS pool?

Q. Yes. A. Deschutes County has their own local pool. We are not a part of the state pool any more. We formerly were, but in the last couple of years we have had our own local pool.

Q. What about Jefferson County? A. Jefferson County has their own local pool similarly.

Q. What is the name of the local medical society? A. Central Oregon Medical Society.

Q. And that covers what counties? A. Jefferson and Deschutes Counties.

Mr. Jauregüy: You may take the witness.

1864 Cross Examination

By Mr. Marcus:

Q. You mentioned, Doctor, you were practicing with some other doctors in a clinic? A. That is right.

Q. It is true, is it not, that in the State of Oregon that is a fairly common method of practicing by doctors; that is, to practice in groups or clinics? A. Oh, yes. Do you mean it is a common practice for doctors to associate themselves in a group?

Q. Yes. A. Yes.

Q. That is right. A. Yes.

Q. I gather from your remarks about the California Physicians' Service that Bend is close to the California border? A. No, we are in Central Oregon, approximately 200 miles from the California border.

Q. How do you get patients under the California Physicians' Service coverage? A. It is quite a vacation center in Bend. Lots of people come up there in the summertime to vacation and we frequently see Californians who become ill while they are up there, or people just going through or visiting.

Q. I believe you stated that you have been a mem-
1865 ber of the State Council since at least 1946, and that you attended their meetings regularly. You have

not attended every single one of their meetings, have you? A. Oh, no, of course not.

Q. You also testified that in all of your attendance at those meetings you never recalled any incident or instance when the Council took any action or advised any action with respect to doctors not associating themselves with commercial hospital associations? A. That is right.

Q. You were a member of the State Council in 1936, were you not? A. No, sir.

Q. When were you first a member of the State Council? A. 1946. My brother was on the State Council.

Q. You have been practicing with your brother? A. I suppose when he attended a Council meeting he told you what happened, didn't he? A. It is customary to come back and report to the local medical society the transactions that go on in the Council.

Q. Since he was your brother, practicing with you, I suppose he talked to you about that, too, didn't he? A. I am sure that he has.

1866 Mr. Marcus:

Q. And how long did your brother practice with you in Bend? A. Well, from 1935 till 1941 and then I went in the Army, and he passed away in 1943 while I was gone.

Q. Doctor, do you recall in 1940 your brother took up with the State Council this matter of the Lumberman's Hospital to carry on prepaid medical care at Bend? A. I am not familiar with that.

Q. What? A. I am not at all familiar with that.

Q. Wasn't it true that in that year the State Council sent a representative to Bend to look into the prepaid medical care situation in that area? A. They may have. I don't know about it.

Q. Doctor, what pool did you say your group was in? A. Well, in our own local, Deschutes County pool.

Q. Deschutes County pool? A. I don't think that is the name. I can't tell you the exact name for that either, but it is a pool comprised just within Deschutes County.

Q. You don't know whether it is an eastern division pool or something of that sort? A. I can't answer that.

Q. Would it be Central— A. It was fairly recently organized under a name.

1867 Q. Would it be Central Division? A. It could be something like that. I am not on the supervisory council for the local pool so I am not too familiar with that.

Q. Well, how long have you been a Trustee of OPS, Doctor? A. Well, since 1946, the fall of '46 I believe it was.

Q. And continuously since then? A. That is right. I think the terms run for six or ten years. I am not too sure of that.

Q. And have you attended every meeting of the OPS Board of Trustees? A. For the exception of one.

Q. How often do they meet? A. Well, they meet once a year.

Q. And in the interim I suppose the organization is under the direction of the Board of Directors? A. That is right.

Q. And you are not a Director, are you? A. No. I am a Trustee.

Q. Doctor, I show you Exhibit 1206 and ask whether you could pick out from that exhibit the particular pool that your area is in. A. I presume that is Central Oregon. That would be my impression.

Q. Doctor, you said something about reports of the National Hospital Association. Now, Doctor, do you recall the case of Mrs. Johnson whom I believe was treated
1868 by your clinic within the past year? A. Johnson—can you identify her by anything more than that?

Q. Well, I believe she was the wife of the manager of the Consumers' Gas Corporation in Bend. A. Yes, I know about that.

Q. Do you recall what you treated her for? A. I didn't treat her. I saw her on one occasion in the absence of one of the other doctors. She was quite upset and not resting and all I did was leave a mild sedative and referred her back to the doctor that was taking care of her.

Q. Well, do you recall what the clinic treated her for? A. No, I don't. I wasn't in on the case other than that one time. She was a patient I believe of Dr. Rademacher.

Q. She was referred to your clinic by another doctor, is that it? A. I don't know. I don't know how she got there, because she was a patient of Dr. Rademacher's and I don't know where he took over. I perhaps did, but I know he had taken prior care of her before too.

Q. Do you recall then, Doctor, when she came to your clinic, the doctor who sent her there had diagnosed her as hypertension—

The Court: Why are you going into individual cases like that?

Mr. Marcus: I want to show—

The Court: I don't care what you want to show. I don't see why you go into individual cases of what people
1869 are treated for.

Mr. Marcus: Well, your Honor, I want to show—

The Court: I don't care what you want to show. I want you to explain to me how you justify going into individual cases by name here.

Mr. Marcus: I will tell you what we are trying to show here, your Honor. We are trying to show that in this particular case this lady was referred to the Hemingway Clinic as suffering from a certain condition. The clinic diagnosed her to be suffering from an entirely different condition. Then the question came up with the National as to whether they were liable. They were liable if she suffered from one condition and they were not liable if she suffered from another.

The Court: You don't need to call names and conditions that surround her case. You can arrange with opposing counsel for an unidentified way of referring to cases like that.

Mr. Marcus: Well, inasmuch as the doctor does not recall this particular case I will have to bring it out on rebuttal, but that is what the reason was for going into this particular case, your Honor.

The Court: I don't care what the reason is. I am telling you, if you kick my wife's name around here by calling it up here and bandying it around in front of the public I resent it very much, and I resent it in behalf of somebody else's wife. I thought you people agreed at the out-
1870 set of this case that you wouldn't do that.

Mr. Marcus: We are trying to do that, your Honor, but in this case it was necessary.

Q. Now, Doctor, you state that in some instances you have had trouble with respect to your fees with the National Hospital Association. Doctor, are you familiar with the terms of the National Association contracts? A. Oh, I am not too familiar with it. I can't be bothered. If I am going to practice medicine I can't spend my time reading a lot of silly contracts. I leave my office girl tend to that.

Q. I see. And for all you know that may be the reason why in a number of instances there has arisen a question as to your fees, is that not so? A. No, because I think we have been paid after bickering back and forth with them with some letters and so forth.

Q. But the dispute might have arisen, as in the case I was trying to call to your attention,—that is, as to whether

the particular ailment or the particular treatment was covered by the particular contract? A. We have a fee schedule that it was finally necessary for our business manager to type out and put on each doctor's desk so he would have some idea when he saw a National Hospital patient, or so on, what the charge was, and we have tried to conform to that. I don't doubt but sometimes mistakes are made, but we have had instances just recently
1871 that are very fresh in my mind. When we want to make school examinations that the National Hospital pay us for they will pay for detection of the ova of the parasite but not pay us for the culture. In other words, they are dictating to us what we can and cannot do. We can't thoroughly study the patient.

Q. That might be that it wasn't covered in the contract, is that not true; for all you know, isn't that true? A. Well, there are different contracts. I am sure of that, and I can't tell you which ones they are, but there are also some of them they should take care of there, in accordance to their fee schedule they should.

Q. Well, as you have just stated, whenever you have taken up a particular matter with them if they thought it was covered they have finally paid you, have they not? A. That is right.

Mr. Jaureguy: I didn't get the Doctor's answer.

(Last answer read.)

Mr. Marcus:

Q. Doctor, I showed you Exhibit 1206 and you stated that you thought that your group was in the Central Oregon pool of OPS, isn't that so? A. Well, I think that was the name of it. I am not too sure of that. That is a name that OPS in their front office in Portland designate it so they can clarify these different pools.

Q. Well, Doctor, I see by this exhibit that the per cent of fee schedules for May, 1949, which Central Oregon
1872 received was exactly zero. A. I remember that month, and that is quite right.

Q. That is Exhibit 1206.

Doctor, who has most of the business in that area as far as the prepaid medical care field is concerned? A. You mean what business has got more of their employees covered by prepaid medical care plans?

Q. No. There are various prepaid medical care organizations that have subscribers in that area I understand. I

am merely trying to find out from you which one has—
A. Which company? I don't know. I suppose the mills have—well, they have about 1200 people employed—

Q. Would you say Lumberman's Hospital probably has most of the prepaid hospital medical care in that area? A. I am not sure. National Hospital has quite a few.

Q. Well, would it be between Lumberman's and OPS? A. Oh, I think National and OPS. I think they are pretty well divided.

Q. Between those three? A. That would be my impression.

Q. Doctor, I understand that in that area there is very frequently Rocky Mountain spotted fever. A. Last year we didn't have a case.

Q. But has that been— A. In the past I guess they have had quite a few there.

1873 Q. And it has been customary to employ vaccination? A. That is right.

Q. I suppose it has come to your attention, Doctor, has it not, that National Hospital Association and the Industrial Accident Commission have shared in the expense of giving such vaccinations? A. I don't know. I suppose they do. So do the rest of them. So does the Lumberman's Hospital.

Q. Has OPS? A. I am sure they do.

Q. You don't know, though, do you? A. No—I don't know for certain, but I am sure that would be covered under the contract unless it was a certain type of contract which didn't.

Q. I am not talking about being under the contract. I am talking about the Accident Commission and National Hospital Association providing vaccination generally. A. I can't answer that. I never participated in such a procedure as a physician.

Mr. Marcus: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. Now, in that local pool, how is it determined what the percentage of the fee schedule is to be? A.
1874 Well, I may not be able to answer that too accurately, either because I am not, again, on that committee, but supposing you had $1500 in your pool and you had $1800 worth of medical bills, then it is prorated among the doctors so that they will all get the same percentage, 80

per cent, 90 per cent and so on. We did have a month in which we didn't get anything and there was some reason for that, that in these pools when the amount is used up, why, there just isn't any to pay them; but, there was also something besides that in which a certain amount had to be set aside for carrier cases, or something, and we knew it was coming and all that.

Q. Set aside for a reserve? A. That is what I understand, that we were to pay in our part and hadn't in the past, or something like that. I am not sure about that. We anticipated that and knew it was coming and weren't surprised by it.

Q. What has been your general experience in whether you have got as much out of OPS in the overall amount, taking into consideration the fee schedule paid and the amount of fee schedule, how has that compared with National? A. I think it's been very satisfactory. We have been getting between 80 and 90 per cent as a rule. There has been one or two months less than that, but as a rule it is between 80 and 90 per cent and that is pretty good collections for a doctor's office.

1875 Q. Well, then, is the OPS fee schedule sufficiently higher than National so that the amount you get from the OPS compares favorably with the amount you get get from National? A. Oh, yes, yes.

Q. Now, this group that you are associated with, you call it a clinic. Is it anything else than a partnership? A. It is entirely a partnership arrangement. We are all partners. Some are certain percentages, depending on how long they have been there and the amount invested and so on, but it is all a partnership.

Mr. Jaureguy: That is all.

(Witness excused.)

Mr. Jaureguy: Dr. McCain.

1876 Dr. Cecil W. McCain was thereupon produced as a witness in behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Your name is C. W. McCain? A. That is right.

Q. Where do you live, Doctor? A. At the present time I am living in Portland.

Q. And how long have you been here? A. I have been here for eleven months.

Q. And prior to that time where were you? A. Practicing in Hood River.

Q. What is your business or profession? A. Physician and surgeon.

Q. And are you retired now? A. Well, at least temporarily.

Q. Is that on account of ill health? A. Yes, sir.

Q. And you have practiced your profession since when? A. I started practicing in 1928. I was in Silverton for about nine months and then I went to Hood River and bought into a partnership there and practiced there from April 4th, 1929 until last February.

Q. And what medical school did you attend? A.
1877 University of Oregon Medical School, Portland.

Q. And did you have some post-graduate work or internship? A. Yes, sir.

Q. And where was that? A. I had about fourteen months at the Good Samaritan Hospital in Portland.

Q. And then you went from there to Silverton for eight months and from there to Hood River? A. That is right.

Q. And you practiced then in Hood River for close to twenty years? A. That is right.

Q. And are you a member of any medical societies? A. Yes. I am a member of the local society, that is the Mid-Columbia Medical Society, State Medical Society, and the AMA.

Q. And over what period of time have those memberships continued? A. Well, that has been since I established my practice in Hood River.

Q. So you have been a member of those societies practically continuously since you started practicing medicine? A. That is right.

Q. Have you ever been an officer of any of those societies? A. Yes. I served two terms as President of our Mid-Columbia Medical Society, and I have been an officer in our alumni association and a member of the
1878 Council of the State Medical Society.

Q. And during what period were you a member of the Council of the State Medical Society? A. I have had three terms, I believe, from 1939 until 1948.

Q. Now, during the time you were practicing medicine did you have occasion to treat patients who were members of hospital associations? A. Yes, sir.

Mr. Marcus: Your Honor, I object to this line of questioning on the same grounds I made with respect to Dr. Durno.

The Court: Admitted subject to the objection.

1879 Q. I don't know as you answered the question. A. Yes, sir.

Q. What hospital associations would that include? A. Well, the Prudential Hospital Association, the Industrial Hospital Association, the National Hospital Association and the Multnomah Medical Service Bureau, the Oregon Physicians' Service, the Permanente Hospital Association, and then from time to time we have had other hospital associations that did some work in our territory.

Q. How did you handle these cases, I mean with respect to taking tickets or billing the association or accepting checks? A. With very few exceptions, they have been handled in the usual manner of accepting tickets and billing the hospital associations.

Q. And accepting checks from the hospital associations? A. Yes.

Q. Does that include the entire time you have been practicing medicine? A. Yes.

Q. Including nine years you were on the State Council? A. That is right.

Q. You say "with certain exceptions." I think you said "with certain exceptions." A. Yes.

Q. What are those exceptions? A. Well, I have
1880 in mind a few cases, at least one case in which I did refuse to treat an employer who had very considerable income and I did not feel that he deserved to be treated on the same fee basis as the low-wage income group that the plan was supposed to cover, so I billed him direct as a private patient.

Q. Did you have any difficulty with him in that respect? A. I believe so. I think he migrated to someone else.

The Court: Mr. Jaureguy, I have been wondering for several days what you had in mind. Are you seeking to establish a pattern? Or are you sampling the state? Is that what you are doing with these witnesses from various counties, from different counties, as to what the practice is, or are you answering particular instances or points developed by the Government?

Mr. Jaureguy: I would say, your Honor, we are sampling the state to show that doctors of the state do take tickets and as to those who do not take tickets, it is for

some reason, not connected with any activity of the Medical Society, but with individual choice. I have called doctors, mostly, as I recall, those who did not take tickets, and they have given their reasons. Now I am calling some doctors who do take tickets. The last one, as I recall, is a member of the Council, also a trustee of OPS. This doctor was a member of the State Council from 1939 to 1940 and has taken tickets during all that time. But it is a case of sampling the state.

The Court: Do you expect to present witnesses
1881 from every county?

Mr. Jaureguy: No.

The Court: Do you expect to present witnesses from every local medical society?

Mr. Jaureguy: We think not. We think as to some of them in Eastern Oregon, where there has been no question raised, that we could skip them.

The Court: No question raised by whom?

Mr. Jaureguy: By anybody, as far as that is concerned. It was stated here that they did not know they were involved, and that they had no trouble, except in the nine counties named.

The Court: In a way, your evidence is directed to answering particular geographical references made in the Government's case?

Mr. Jaureguy: In the main, your Honor, we are explaining the activity there. I do not recall, for instance, any doctors that were named, for instance, in Klamath County, but they designated the Klamath Medical Service Bureau to a certain extent, so we expect to go there, call witnesses from there, and there was evience as to this county here, and we expect to cover this county and we expect to call members of the Council and officers of the State Association. But it is largely a sampling process, just because we think it is too much of a burden to bring in everybody.

The Court: In some instances you have presented
1882 more than one doctor from the same county.

Mr. Jaureguy: That is correct, because those were counties that the Government concentrated on. They concentrated largely, as your Honor will recall, on Clatsop County and Jackson County, and we feel we should pay more attention to those counties.

The Court: Will your witnesses all, or nearly all, be physicians?

Mr. Jaureguy: Yes; aside from perhaps two employes of defendants they are all doctors. There may be one or

two laymen who are in some way connected with a doctor's office.

The Court: All right.

(Last question read.)

Mr. Jaureguy:

Q. At any rate, was there a proposal that the Multnomah Medical Service Bureau, which had formerly been known as the Multnomah Industrial Health Association, had negotiations on to enter Hood River County? A. Yes, sir.

Q. Just tell us about that experience, would you? A. Well, I was designated by our local group—that was not the Mid-Columbia Medical Society, but it was our local Hood River doctors—to affiliate with, or, rather, to act as a representative to effect an affiliation with the Multnomah Industrial Health Association to operate or to have a contract with the Apple Growers Association in Hood River, which is the major industrial plant there.

1883 We felt by doing that we would have better administration of the medical and hospital service to the employes. But at that particular time, after the men had affiliated, all the men excepting one, I believe, had affiliated with the Multnomah group, one individual influenced the, at that time, president of the Apple Growers Association. The contract was signed with a rather unreliable hospital association, with the result that they carried that contract for about a year and a half and then went bankrupt and we lost a considerable amount of money.

Q. How much did you lose personally? A. I think about $2,600, on the reduced-fee schedule that we were presented with, and we had very little choice in the matter. We either accepted that or else we didn't take care of patients.

Q. Do you remember about when this took place? A. I don't remember the exact date. It was in the early or middle '30s.

Q. Then it would have been before the Multnomah Industrial Health Association changed its name to Multnomah Medical Service Bureau? A. I believe it was.

Q. During this time has any medical society ever endeavored to induce the doctors of the Mid-Columbia district not to accept tickets of the hospital associations? A. Not to my knowledge.

Q. Or has any doctor purporting to represent
1884 any medical society ever endeavored to induce the doctors not to take hospital association tickets? A. Not to my knowledge.

Q. Or during this time do you recall—well, I think I have covered that.

You have given the names of hospital associations that took care of—you have mentioned, I think, the National, the Industrial and the Prudential, the Permanente, and OPS. What about OPS? I don't know as you mentioned it. A. Yes, I believe I did.

Q. Were you one of the cooperating physicians of OPS? A. Yes, sir.

Q. Do you know about the other doctors in Hood River, whether they took tickets, too?

Mr. Marcus: I object to that, your Honor, unless he personally knows and can state the foundation on which he bases any answer to this question.

The Court: He may answer.

A. I have never heard any statement to the contrary. I have never known of any of the men refusing hospital association tickets, unless it was some individual or isolated case such as I mentioned earlier.

Mr. Jaureguy: You may take the witness.

1885 Cross Examination

By Mr. Marcus:

Q. Doctor, I gather from what you have said—

(Recess.)

Mr. Marcus:

Q. I was asking you, Doctor, whether from what you said it is not true that you practiced in the Hood River district approximately twenty years? A. Approximately, yes.

Q. During that time I suppose you had a number of patients from the State of Washington? A. Yes, sir.

Q. And some of those patients were covered by hospital association contracts or hospital associations in Oregon, were they not? A. Yes, sir.

Q. Doctor, you stated that you were President of the Mid-Columbia Medical Society on two different occasions, is that right? A. Yes.

Q. Do you recall the times? A. No, I don't remember exactly.

Q. Would one period be around 1939, do you think? A. I believe it was.

Q. Now, Doctor, you testified that there was a period—you thought it was in the early '30s—when a Hood
1886 River group of doctors, not the Mid-Columbia Medical Society, got together and decided that they would like to have the Multnomah Medical Service Bureau come into that area, and I believe you took some steps in that direction. I believe you also testified that the State Society did not have anything to do with that. Is that correct? A. I beg your pardon?

Q. I believe you also testified the State Society did not have anything to do with that. Is that not correct? A. I did not testify to that, but that is correct.

Q. Doctor, isn't it actually true in the first place that it was the Mid-Columbia Medical Society which desired to get rid of hospital associations in that area and get the Multnomah Medical Service Bureau down there? A. That particular time I referred to wasn't the action of the Mid-Columbia Medical Society.

Q. Was there any time when the Mid-Columbia Medical Society took action? A. The Mid-Columbia Medical Society did affiliate with OPS, but, to my knowledge they never affiliated with the earlier organization.

Q. To your knowledge, the Mid-Columbia Medical Society never took action of the sort you just stated with respect to the Hood River group? A. No, because it was a local contract.

1887 Q. I am going to read from Exhibit 2036 and ask whether, after I have read certain portions, you still want to abide by the answers you have given:

This is a letter from DeWalt Payne, and it is addressed to the President, Oregon State Medical Society:

"At a meeting June 5, 1939, of the Mid-Columbia Medical Society the following resolution was passed:

"Whereas, the employers, employes and doctors of these communities, feeling the need for the substitution of the present lay hospital contracts by physician-controlled organizations, and,

"Whereas, last November this Society was of the opinion that it would be preferable to invite a group, such as the Multnomah Service Bureau, to cover our communities rather than to form a hospital association of our own, and,

"Whereas, certain employers have been advised to hold up contracts with the expectation that some plan would be worked out with the approval of the State Medical Society, as a substitute for the lay-owned hospital association,

"Therefore, now be it resolved, that the governing body of the State Medical Society be urged to expedite their decision as to the status of the Multnomah Service Bureau so that the Mid-Columbia Medical Society may pro-
1888 ceed immediately with an approved contract."

Does that recall to your mind that the Mid-Columbia Medical Society took that action you were talking about? A. No, they did not take that action at that time. This was earlier than that incident that I referred to.

Q. I am not trying to confuse you, Doctor, but when you talk about this earlier period, and then I asked you whether at any other period had the Mid-Columbia Medical Society taken similar action you said no. Isn't it true that the Mid-Columbia Medical Society did take action and did take action in collaboration with the State Medical Society, to try to bring the Multnomah Medical Service Bureau down there in your area and eliminate hospital associations at that particular period of time? A. No, at no time did we have the idea of eliminating the hospital associations that were already—that already had contracts there.

Q. I just read to you:

"Whereas, the employers, employes and doctors of these communities, feeling the need for the substitution of the present lay hospital contracts by physician-controlled organizations—"

And then it goes on to ask the State Society to approve the Multnomah Medical Service Bureau so that contracts may be had by the doctors in that area with that group.

Mr. Jaureguy: That is not what you read a while
1889 ago.

Mr. Marcus:

Q. Do you recall being on a committee of the Mid-Columbia Medical Society to take action in that respect at that time with respect to what I have just read you? A. No. What I referred to earlier was that I was designated by the physicians of Hood River to attend meetings of—I believe it was the Council of the Multnomah Industrial Health Association—

Q. Yes, but, Doctor, I am now talking about the period around 1939. What I have read to you relates to that period, and my question is whether, at that period, you were on any committee designated to take action with respect to this resolution which I have just read? A. I don't recall exactly. It is possible that I was because of my former contact with them.

Q. Let's see whether this recalls to you whether you were on such a committee. This is a part of the same exhibit. I read from a letter from the Secretary of the Mid-Columbia Medical Society, dated July 12, 1939, addressed to Dr. Charles E. Sears, President, Oregon State Medical Society. It is in response to a letter that the State Medical Society wrote to your Society.

"In accordance to the next to the last paragraph of your letter of July 6th regarding the establishment of the Medical Service Bureau in this territory, Dr. W. N. Morse, President, appointed as a supervisory committee, Dr. C. W. McCain, of Hood River, Dr. Paul Vogt, and Dr. Leo Moore, of The Dalles, to proceed with arrange-
1890 ments."

Does that recall to you that you were on a committee of the Mid-Columbia Medical Society at that time designated to take action with respect to this resolution? A. Yes, I have no doubt that is true, but we never took any action. We never formed any local medical service bureau.

Q. You never took any action? Did you take any action to try to get hospital associations to have income limits with respect to their contracts? A. I am not sure that we took any action. I know that was discussed.

Q. You are not sure whether you took action? You may have? A. We never accomplished anything in that direction, but I think it was the feeling of everyone that it certainly was the logical thing to do, because the reason that we agreed to such a low fee schedule was for the benefit of the low-wage income group of workers.

Q. To the best of your recollection, then, at that period, Doctor, you would not say that your Society did not take action to try to get associations to change their contracts to have income limits? A. No, I wouldn't say that we did not attempt to take some action.

Q. Did not the Society to which you belonged take action to boycott hospital associations if they did not have income

limits in their contracts at that particular time? A.
1891 That may have been brought up.

Q. You would not say that the action did not occur? A. Well, at least it was never effected.

Q. I am asking you a question, Doctor, whether you are prepared to say that the Society did not take action to boycott associations if they did not have income limits in their contracts? A. I would say that we did not because we never refused to take their tickets.

Q. You would say the Society did not? Well, I call your attention—

Mr. Jaureguy: I would like to have that last answer read.

(Last answer read.)

Mr. Marcus:

Q. Reading just a portion of Exhibit 2000—and this is a statement by the Secretary of the Mid-Columbia Medical Society, in connection with a letter that had been received from the State Society. It says:

"The Mid-Columbia Medical Society for the past several years, in cooperation with the Council of the Oregon Medical Society, have considered the problem of prepaid medical care for the low-wage group. A discussion was had concerning the advisability of forming our own group to carry out contracts to the exclusion of all hospital associations.

"This procedure, however, was decided to be inadvisable at this time and it was the consensus of opinion of
1892 this Society that we should invite all or any of the organizations handling this type of contract to do business in our community, but under the supervision of and in cooperation with the doctors who are called upon to do medical work.

"On November 3rd the Society passed the following resolutions which are self-explanatory:

1893 Mr. Marcus:

Q. (Continuing) "1. That a member of this Society do no work for any hospital association making contracts for full coverage on individuals whose income is or above the following salary limits: $1,000 annually for a single person, $1,500 annually for a married person.

"2. That the hospital associations be notified of these limits and 60 days be given to eliminate their contracts which are not acceptable."

Does that recall to you, Doctor, that your Society did take action to have the associations boycotted if they did not reduce their income limits? A. No. I still don't believe that we ever took any effective action.

Q. Well, Doctor, when you say you do not believe you ever took any effective action, I suppose you are referring, I assume you are referring to your recollection that as far as you were concerned it is your recollection you have always taken their tickets, is that right? A. That is right.

Q. Now, Doctor, you seem to be under the impression, or do you, or are you under the impression that no further action was taken by your Society except merely the passage of this resolution? A. No, I think it is possible something more might have been done.

1894 Q. Was it during this period, Doctor, that you were a member of the State Council? A. Yes, I believe it was about that time that I first took office.

Mr. Marcus: That is all.

Redirect Examination.

By Mr. Jaureguy:

Q. This same resolution that was read from Exhibit 2000 also has another recommendation:

"It is recommended that solicitations for contracts with individuals in small groups if confined to the above income levels be written with an addition to the monthly rate to cover the extra bookkeeping charge in proportion inversely to the size of the group."

Did you ever get anywhere on that? A. I don't believe so.

Q. You never got anything extra for bookkeeping in connection with these hospital associations? A. Not that I recall.

Q. Well, do you know whether that resolution in any way affected the practice of other doctors in taking tickets in your area? A. I feel quite sure that it did not.

Q. You don't know what ever happened to this movement that was apparently started there at one time

1895 about this income limit business? A. I think it was just an excellent idea that it didn't get over.

Q. Didn't get over. Did you still have employers with big incomes with these contracts? A. Yes, sir.

Q. Did that continue all the time you were practicing there as far as you know? A. Yes. I believe that it was curtailed somewhat after there was more competition to the groups that had been operating in that area and their fee schedule was raised as a consequence of their competition.

Mr. Jaureguy: That is all.

Recross Examination

By Mr. Marcus:

Q. Doctor, just two questions. It is a fact, is it not, that you don't actually know at that period, that 1939 period, that there were not some doctors in your group who thought by virtue of such resolution having been passed that they should not deal with the hospital associations and did not deal with them? You don't actually know whether or not that happened, do you? A. To my knowledge it was more isolated cases if they were, if hospital tickets were refused.

Q. Now, Doctor, one other question. The question
1896 of bookkeeping has come up and whether you were paid for it. You have never been paid for bookkeeping by OPS, have you? A. Paid for bookkeeping?

Q. Yes. A. Well, we were paid for a certain amount of bookkeeping along with our professional services.

Q. Well, that is true with respect to all prepaid medical care plans? A. That is right.

Mr. Marcus: That is all.

Mr. Jaureguy: That is all.

(Witness excused.)

Mr. Jaureguy: I had one other question that I wanted to ask Dr. Hemingway. I wonder if I could recall him just for that purpose.

The Court: Get him up here while he is here.

1897 DR. MAX WILLIAM HEMINGWAY, a witness on behalf of Defendants, was recalled to the stand and testified further as follows:

Direct Examination

By Mr. Jaureguy:

Q. Now, the OPS has a board of trustees and has a board of directors and has supervising committees. Do any of the doctors that work in any capacity for OPS get any compensation whatever for services rendered other than taking care of patients? A. No, they don't get any compensation, no salaries. They get paid mileage when going from your home to the appointed place of meetings, but that is all.

Cross Examination

By Mr. Marcus:

Q. Doctor, how large an administrative staff does OPS have? A. Oh, I can't answer that. It is changing. In the beginning it was small and now it is larger. I don't know.

Mr. Marcus: That is all.

(Witness excused.)

Mr. Jaureguy: Dr. Ross, please.

1898 DR. WELDON T. ROSS, was thereupon produced as a witness in behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Would you give us your name, please. A. Weldon Ross.

Q. And where do you live? A. McMinnville, Oregon.

Q. And what is your business or profession? A. Physician and surgeon.

Q. You have been a physician and surgeon how long? A. Since 1938.

Q. And at what school did you take your training? A. Medical training at Duke University, University of Chicago and Baltimore.

Q. University of Chicago and what? A. Baltimore, Maryland.

Q. And you had an internship? A. The last two were internships.

Q. Oh, yes. Have you practiced other than in McMinnville? A. Five years in the Army.

Q. Five years in the Army. What period was that? A. 1941 to 1946.

Q. And other than that your practice has been
1899 in McMinnville all the time? A. Yes, it has.

Now, do you recall a move that was on, started at McMinnville, to try to form some kind of a cooperative to take care of the medical cares of the members? A. Yes, I do.

Q. Did you have any occasion to discuss that with—who seemed to be at the head of that movement? A. Mr. Youngman.

Q. Mr. Youngman of McMinnville? A. Yes.

Q. And did you have any conversations with him with respect to doctors, you or the other doctors, and that move? A. I—

Q. Do you know about a meeting they had there? A. Yes.

Q. Did you have any discussion with him prior to that meeting? A. Talked with him on the phone about that meeting.

Q. And what did you say to him? A. I had read their notice in the paper that there was going to be an open meeting to discuss inexpensive prepaid medical care and told him that we were all interested, we were interested in that, and we would like to have—attend, and wanted to know if they would be interested in having us bring a representative of Oregon Physicians' Service there who were more experienced than we were in that type
1900 of thing.

Q. And did you tell him what you would like to be there for? A. Just what I said, just that.

Q. In order to take part in the discussion? A. Yes.

Q. And what did he say? A. He said my presence wasn't wanted or desired and it would be very poor taste if I came.

Q. So, did you go? A. No, I didn't.

Q. Then what happened to that plan to try to have a cooperative prepaid plan? A. Well, at a later date they met with the County Medical Society, and at that meeting they presented a vague outline of what they had in mind, and it was nothing definite. It seemed all very ethereal.

Q. And did the doctors do any of the talking at that

meeting? A. We asked them some questions and expressed our willingness to cooperate and help them in the formation of any sound, well-based medical care plan.

Q. What were the natures of the questions you asked them, do you remember? A. What services they were going to render and what they planned to charge their members and whether they were familiar with the insurance laws and procedures to cover such insurance
1901 plans.

Q. And did you come to any conclusion as to whether they had a plan that was sound? A. Well, it was all so vague that we couldn't find out what their plan was at all.

Q. Well, was there any threat or statement that the doctors wouldn't cooperate with any plan they might get out? A. None that I remember of.

Q. Then did the local doctors there discuss the proposed plan with any representatives of the State Society or anybody from the State Society or OPS? A. Yes. Informally we told, I told them what their ideas were, but the plan was very vague.

Q. What finally happened to it, do you know? A. I thought it died of its own inertia. I never heard any more about it after that meeting of the County Medical Society.

Q. Well, did you have an office in the County Medical Society at that time? A. Yes. I was President at that time.

Q. And did you endeavor in some way to collaborate with Mr. Youngman's group in working out some method? A. We appointed a committee of local physicians to cooperate in any way possible with them.

Q. And did that committee meet with any group from Mr. Youngman's group? A. They were never requested to.

1902 Now, you were obviously a member of the Medical Society when you were President of it. And how long were you a member of the Medical Society? A. Well, I joined the Medical Society in 1940 and they carried me a member through the war years, and—

Q. And you have been a member ever since? A. Yes, I have.

Q. And have you held any offices besides being President? A. Secretary-Treasurer.—

Q. During the time have you been a member of the State Medical Society? A. Yes, I have.

Q. Ever been an officer in the State Medical Society? A. No, I have not.

Q. Now, during your practice in McMinnville have you had occasion to treat patients who are members of some commercial hospital association? A. Yes.

Mr. Marcus: Your Honor, I object to any testimony by this witness with respect to any experience he may have had with these hospital associations on the same grounds as made with respect to Dr. Durno.

The Court: The same ruling, admitted subject to the objection.

Mr. Jaureguy:

Q. Your answer is Yes, that you have? A. Yes.

1903 Q. And what has been your practice in the manner in which you handled those cases, particularly with reference to sending out the bills and accepting checks, accepting tickets? A. Accept them.

Q. Has that always been true while you were practicing in McMinnville? A. Yes.

Q. And has any medical society ever endeavored to induce you not to do that? A. No.

Q. Or suggested that you shouldn't do it? A. No.

Q. Do you know what the practice of the doctors generally in McMinnville is in that respect? A. I believe they all take them.

Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Marcus:

Q. Doctor, you state that you started to practice in McMinnville in 1938? A. No.

Q. When did you start to practice? A. 1940.

1904 Q. 1940. So that you were there just about a year or so before you entered the armed forces, is that not right? A. Yes.

Q. And when you came back you joined or you were already a member of the local County Medical Society? A. Yes.

Q. And at that time did you join the Oregon Physicions' Service? A. I joined I believe before.

Q. Before you left? A. Went into the service.

Q. And you renewed your association with them, did you not, when you came back? A. Yes.

Q. I suppose most of the doctors in that area are participating physicians with OPS, are they not? A. Yes.

Q. And, Doctor, it is true, is it not, that OPS was invited to come down into Yamhill County by a group of physicians in that area headed by you? A. When, when?

Q. Well, let's take the different years. Take after the war. A. Well, they met with us regularly, our County Medical Society meetings.

Q. I am asking you whether they were invited to come down into your area by a group of physicians
1905 headed by you. A. Yes.

Q. And, Doctor, how many shares do you have in the Oregon Physicians' Service? A. I don't recall.

Q. Isn't it true, Doctor, that the doctors in that area have a very real interest in promoting OPS? A. Yes.

Q. And it is true, Doctor, is it not, that before this meeting of the cooperative group as to which there has been some testimony that the doctors in that area knew that that was in the wind, did they not? That is a small community? A. Not to my knowledge.

Q. That is a rather small community down there, isn't it? A. Yes.

Q. The kind of a community where it is rather hard to keep secrets, is it not—I mean due to its size? A. I don't know about that.

Q. Doctor, isn't it true that when the medical society became aware that there was this cooperative plan in the wind that they took action to increase solicitation by OPS and to have their members go out and get OPS contracts? A. No.

Q. Doctor, I am reading from Exhibit 1941, that part of it which contains the minutes of your County Medical Society for February 17, 1948.

1906 "Special meeting called to discuss the group health plan being formulated by an undisclosed organization. OPS was urged to contact all possible groups for insurance coverage and that all doctors have OPS literature and bulletins in their office. The motion was passed to have the OPS act as a contact agent in all matters relating to society and insurance contracts."

Now, do you recall that motion? A. Yes, I do. But no member of the County Medical Society went out and solicited any contracts or contacts.

Q. But you do recall the Society taking this action to go out and get OPS business? A. Telling OPS to do it.

Q. Yes. And that was in connection with this new group

health plan that had come to the Society's attention, was it not? A. Possibly.

Q. Do you recall, Doctor, a meeting held by your Society at which this group health plan was discussed and at which there were representatives from the State Medical Society? A. Yes.

Q. That is, the matter was discussed together with representatives of the State Society by your Society, is that not true? Your answer is Yes? A. Yes.

Q. Doctor, you say there was a committee appointed as a result of your meeting with representatives of
1907 this group health plan. I understood you to say that as far as you knew the committee was never invited to meet with the group health plan sponsors, is that correct as far as you know? A. That is correct.

Q. As far as you know, the committee never in turn invited the group health plan adherents to sit down with it, isn't that so? A. That is correct, to the best of my knowledge.

Mr. Marcus: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. Well, was your experience with Mr. Youngman at the start when he said you were not welcome and that you weren't wanted, did that have any bearing on your committee's failure in contacting Mr. Youngman's group, do you know? A. It had a great deal to do with it.

Q. The group that were promoting Mr. Youngman's thought, were they all in McMinnville, do you know? A. No, they were not.

Q. Where were they? A. One I recall is from Yamhill, which is about twelve miles northwest of McMinnville, and another was about fifteen or twenty miles southwest of McMinnville.

1908 Mr. Jaureguy: That is all.

Recross Examination

By Mr. Marcus:

Q. Just one question, Doctor. I suppose the medical facilities in McMinnville are such, are they not, to draw patients from the outlying areas? A. From the immediate surrounding area.

Mr. Marcus: That is all.

Mr. Jaureguy: That is all.

(Witness excused.)

Mr. Jaureguy: Call Dr. Noble.

DR. ALBERT G. NOBLE was thereupon produced as
1909 a witness in behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Give us your name, please, Dr. Noble. A. A. G. Noble.

Q. And where do you live? A. McMinnville.

Q. How long have you lived in Oregon? A. Oh, since '27.

Q. And what is your business or profession? A. Physician and surgeon.

Q. You have been practicing that how long? A. Oh, since '13, 1913.

Q. And what medical school did you attend? A. University of Illinois.

Q. And have you practiced elsewhere than in McMinnville? A. In South Dakota.

Q. When did you practice there? A. Well, up until I came out here.

Q. From 1913 then to— A. '27.

Q. —1927. And have you been practicing in McMinnville ever since? A. Yes.

1910 Are you a member of any medical society? A. Yamhill County and Oregon State and AMA.

Q. At one time, as I recall, the three counties of Marion, Polk and Yamhill had a single society. A. That is right.

Q. And were you a member of that society? A. I was.

Q. Do you recall when Yamhill County formed its own society? A. Well, I wouldn't say definitely, but I think it was in about '30 or thereabouts.

Q. And have you been a member of those societies continuously since you started practice? A. I didn't understand.

Q. Have you been a member of those societies continuously since you started the practice of medicine? A. Yes, I have.

Q. Have you been an officer of any of those societies? A. Yes. I was the secretary of the Yamhill County Society for a number of years, and President one year.

Q. Do you remember about when it was you were President? A. I think I preceded Dr. Ross, '47—I wouldn't be sure of that.

Q. Now, in your practice have you had occasion to take care of patients who were members of commerical hospital associations? A. I have.

1911 Q. And what has been your method of taking care of the billing, sending in bills and accepting checks or accepting tickets?

Mr. Marcus: I object, your Honor, to this line of testimony on the same grounds as with respect to Dr. Durno.

The Court: The ruling will be the same. The testimony will be admitted subject to the objection.

Mr. Jaureguy:

Q. Just explain what you meant. A. I have always accepted them.

Q. Accepted the tickets? A. Yes.

Q. And whom have you sent the bills to? A. I bill the Association.

Q. And accepted their checks in payment? A. Yes.

Q. And you say that has always been your practice? A. Yes.

Q. Has any medical society ever attempted to induce you to change that practice? A. No.

Q. Do you know what the practice of other doctors in Yamhill County is in that respect? A. As far as I know they all accept their patients.

Q. And has any medical society, as far as you know, ever induced them to change that practice? A. No.

1912 Q. What has been your experience, Doctor,—

First, will you tell us what commercial hospital associations you have taken tickets of? A. National, Industrial, Prudential.

Q. What has been your experience with these hospital associations, some or all of them, whether they cause you any trouble or inconvenience or if you have any difficulties with them? A. Not any great difficulty in recent years.

Q. What do you mean by "recent years"? Since when? A. Shortly after OPS was organized.

Q. Could you explain the difference between your experience in recent years and your experience prior to that time? A. It was not very satisfactory prior to that time.

Q. What was there about it that was unsatisfactory? A. Well, we could only render first aid and no surgery. They invariably would ask you to send a patient in to Portland.

Q. Did you feel you were competent and qualified to take care of the patient? A. I thought I was. Maybe I wasn't.

Q. What about fees? A. Well, I don't recall that the fees ever was a bone of contention with me very much.

Q. There has been some testimony here about the Physicians' and Surgeons' Hospital Association. Do
1913 you remember that organization? A. Physicians' & Surgeons'?

Q. It was organized, or I think it had its start or headquarters in Salem; it started about 1930. A. Oh, yes.

Q. Do you remember that? A. Yes.

Q. Did you ever have any affiliation with or were you a member of that organization? A. Yes, we were affiliated with that association.

Q. That is, that association extended not only in Marion County but also in Yamhill County? A. Included Yamhill County.

Q. During the time you were a member of that organization did you continue to take tickets of other hospital associations? A. I did.

Q. Are you a cooperating physician of OPS? A. I am.

Q. You handle, then, all commercial hospital associations and OPS? A. Yes.

Q. Do you make any discrimination in the manner in which you treat your patients as between private patients, OPS patients and commercial hospital association patients? A. I do not.

Q. Do you recall that about a year ago there was
1914 some movement headed by Mr. Youngman to create a cooperative for prepaid medical care? A. I do.

Q. Do you remember the name of the hospital they were thinking of buying? A. The McMinnville Hospital.

Q. Were you practicing in that hospital? A. I was.

Q. Who owned that hospital? A. Who owned it then?

Q. Yes, who owned it then? A. Well, it was a corporation. Dr. Huckleberry owned 200 shares or a controlling interest.

Q. Did you own any of the stock? A. I did.

Q. Did you discuss with Dr. Huckleberry the purchase by you from him of his interest in the corporation? A. Yes. There was verbal discussion.

Q. Was there any verbal agreement or understanding? A. Well, it was my understanding that in case he wanted to sell he would let me know.

Q. And give you an opportunity to buy? A. Yes.

Q. Was that understanding prior to the time Mr. Youngman considered or started his notion of having a prepaid medical care plan there? A. Yes, it was.

Q. Were you connected with that hospital before Dr. Huckleberry purchased his stock? A. Oh, yes.

Q. Do you know about when he came into the community and purchased stock? A. 1946, I think.

Q. Whom did he replace? A. Well, he bought Dr. Heringer's interest or stock.

Q. You were practicing with Dr. Heringer? A. Yes.

Q. Before Dr. Huckleberry came in? A. Yes.

Q. Did you have any discussion with Mr. Youngman with respect to his proposal to form this cooperative? A. Yes, I did.

Q. What were those discussions about? A. Well, he wanted to know if I would be interested in joining the group.

Q. What did you say about that? A. I told him I would have to know something about it first, what their plans were.

Q. Did you ever get any further information on it? A. Well, they were very indefinite. I really—I wasn't satisfied with his plan.

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Q. You mean you were not satisfied with it as he explained it to you? A. Yes.

Q. Then do you know whether the Medical Society invited him to come to a meeting of the Medical Society to explain it? A. They did.

Q. Were you present at that meeting? A. I was.

Q. What explanation, if any, did he make of his proposed organization? A. Well, about the same as he had made to me, that their plans were more or less indefinite. I wasn't satisfied with their setup.

Q. At that meeting was there a committee appointed? A. There was.

Q. Were you a member of the committee? A. No, I was not a member.

Q. Did that committee ever get anywhere in trying to find out what it was all about?

Mr. Marcus: I object to that, your Honor. He just testified he was not a member of the committee.

The Court: He may answer.

A. No; as far as I know, they did not.

Mr. Jaureguy:

Q. At any time at that meeting or any other meeting was there any suggestion that if any doctor had anything to do with this cooperative plan he would get in bad with the Society? A. No.

Q. Or at any time has any medical society suggested to you, or in so far as you know, to any other doctor in Yamhill County, that they should not take tickets of hospital associations? A. No, sir.

Q. Are you a cooperating physician with OPS? A. I am.

Q. Do you have any office or are you a member of any committee of OPS? A. I am a member of the county supervisory committee.

Q. For Yamhill County? A. Yes.

Q. Has Yamhill County what we call a local pool, or is it a part of the state pool? A. At present it is a local pool.

Q. How does OPS get along with the doctors? A. All right, as far as I know.

Q. Have you found it necessary in your work for OPS patients to get authorization for anything you do? A. Well, I never bother about it.

Q. Did you ever get into any trouble with them for not bothering about it? A. No.

(Thereupon, at 12:00 o'clock noon a recess was taken until 2:00 o'clock P.M.)

Court reconvened at 2:00 o'clock P.M., pursuant to recess.

The Court: Here is a telephone call from Mr. Jaureguy or Mr. Coughlin.

Mr. Jaureguy: That phone call came more than five minutes ago?

The Court: Yes.

Mr. Jaureguy: I just called that number.

Mr. Jaureguy: I think I had finished my direct examination.

DR. ALBERT G. NOBLE, a witness on behalf of Defendants, having previously been duly sworn, resumed the stand and further testified as follows:

Cross-Examination

By Mr. Marcus:

Q. Doctor, you have been practicing a long time in McMinnville, haye you not? A. Yes.

Q. Since when? A. 1927.

Q. 1927? A. Yes.

1919 Q. I suppose there are more doctors in that vicinity now than there were when you started? A. Yes, there are.

Q. That is probably true with respect to the period before the war and since the war? A. I think so.

Q. The answer is Yes? A. Yes, I think so.

Q. Now, Doctor, you have been the President of the Yamhill County Medical Society, have you not? A. That is right.

Q. Do you recall the period? A. I think it was 1946 or '47. I don't just remember it.

Q. Have you ever held any other offices with the Society? A. Secretary.

Q. And have you been on any of its committees? A. On the OPS committee, yes.

Q. You have? A. Yes.

Q. Have you ever been an officer of the State Society? A. No.

Q. Have you ever been a delegate from the County Society? A. No.

Q. Doctor, there was some testimony by you this morning with respect to the Physicians' & Surgeons'

1920 Association of Salem. That association was approved by the Yamhill County Medical Society, was it not? A. Yes.

Q. I wonder if you could tell us a bit about the circumstances of that approval. A. Well, at that time there was a tri-county society of Marion, Yamhill and Polk Counties and most of us were members of that. When that organization was formed, we naturally went into it.

Q. The association applied for approval, is that it? A. How is that?

Q. The association applied for approval from the County Medical Society? A. Yes.

Q. Do you recall whether they did that with respect to—oh, I see. At that time there was just the Marion-Polk-Yamhill Society, is that it? A. It was all one, all one.

Q. Doctor, you testified this morning that prior to 1941 you had some trouble with hospital associations with respect to their telling you to send patients to Portland. Was that true of a particular hospital association? A. Well, it was true of all of them that we were working with at the time.

Q. When you say prior to 1941, that might have been some time prior to that date, is that not so? A. 1921 That is true.

Q. It is true, Doctor, is it not, that some ten years ago certainly the facilities, the medical facilities in Portland, were quite superior to those in McMinnville? A. Oh, possibly; yes. I suppose they were.

Q. I suppose there were a great many more specialists in Portland than in McMinnville, isn't that so? A. Yes, that is true.

Q. Is it not true with respect to those cases which were suggested be sent to Portland they were cases where there was something serious involved, as far as the patient was concerned? A. No, that was not always true.

Q. Isn't it true, Doctor, it was usually in connection with having those patients treated by specialists? A. Not necessarily.

Q. It was certainly true in some of those instances? A. It possibly was. I don't recall any particular instance.

Q. Well, Doctor, about how many specialists were in McMinnville about ten years ago? A. Oh, probably one.

Q. One? A. Yes.

Mr. Marcus: That is all.

1922 Redirect Examination

By Mr. Jaureguy:

Q. Did you say the Physicians' & Surgeons' Hospital Association, back in 1930, applied for some kind of approval from the State Medical Society? A. No, I don't recall saying that. Did I?

Q. Or from the County Medical Society? A. State your question again.

Q. Do you remember the Physicians' & Surgeons' Hospital Association that was formed in 1929 or 1930? A. Yes.

Q. Did it apply for approval to any medical society? A. Well, I don't recall the circumstance. I don't recall whether they did or not.

Q. These patients that you say would be taken away from you in McMinnville,—I think you said you felt competent to take care of them yourself,—were they being sent to Portland to some specialist or were they being sent up to be taken care of by the panels of the hospital association? A. As I recall, they were sent to doctors that were employed by the association.

Mr. Jaureguy: That is all.

1923 Recross Examination

By Mr. Marcus:

Q. When I asked you, you stated in some instances you thought that these patients were sent to specialists. A. They probably were.

Q. I suppose you, yourself, have referred private patients to specialists in Portland, have you not? A. Yes.

Q. When I asked you a specific question with respect to the Physicians' & Surgeons' Hospital Association you stated that they had applied for approval from the Marion-Polk-Yamhill Society and had gotten that approval. Do I understand in response to a question by defense counsel you are taking a different position? A. Well, I don't know as I understood your question.

Q. I believe the question was clear enough. I am asking that question now. A. Well, ask it again.

Q. Did the Physicians' & Surgeons' Hospital Association of Salem get the approval of the Marion-Polk-Yamhill County Medical Society? A. Did the Physicians' & Surgeons' Hospital Association get the approval of what?

Q. That is, the tri-county medical society? A. Well, I suppose they did. They must have; otherwise it

1924 would not have been operating without the approval.

Mr. Marcus: I just wanted to get that clear for the record.

Redirect Examination

By Mr. Jaureguy:

Q. Why do you say that? Why do you say it would not have been operating if it did not get the approval? A. Well, that is medical ethics, isn't it?

Q. I don't know, I am asking you. A. Yes.

Q. You did not hear Dr. Baum's testimony? A. No.

Q. That it was entirely separate? A. Well, my memory is vague as to that, but I naturally assumed that that was the case.

Q. Your answer to Counsel is that that is what you are assuming? A. Yes.

Mr. Jaureguy: That is all.

Recross Examination

By Mr. Marcus:

Q. If there is any doubt on that score, I had better refresh your recollection, Doctor.

Doctor, I have here Exhibit 1988, which is a letter
1925 from the Oregon State Medical Society to you, as Secretary of the Yamhill County Medical Society.

Mr. Jaureguy: The date?

Mr. Marcus: The date of the letter is May 18, 1939, in reference to a request by the Northwest Telephone Company, taking up the question of having the Northwest Telephone Company employes having prepaid medical care through the Physicians' & Surgeons' Hospital Association of Salem, and it expressly states it was approved by those societies you have mentioned.

Does that recall anything more definite to you than your prior recollection? A. Yes.

Q. It does not? A. It does not.

Mr. Marcus: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. This letter from the Oregon State Medical Society, dated May 18, 1939, states:

"It is our understanding that the Yamhill County Medical Society has approved the Physicians' & Surgeons' Hospital Association of Salem as the organization through which prepaid medical care is available to groups of employes in Yamhill County."

1926 That does not refresh your recollection on anything that happened in 1930, does it? A. No.

Mr. Jaureguy: That is all.

Mr. Marcus: That is all.

(Witness excused.)

Mr. Jaureguy: If your Honor please, we had planned on calling Mr. Nelson. However, we would like to call a doctor now, but I want to say with respect to Mr. Nelson that he has illness in his family, that two members of his family are ill, and he would not like to be away any more than necessary. I wonder if we could interrupt the testimony of any witness then on the stand to let him take the stand when he comes in.

The Court: Yes.

1927 Dr. Ralph W. Stearns was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Give us your name, please. A. Ralph W. Stearns.
Q. Where do you live? A. Klamath Falls.
Q. How long have you lived there? A. Since 1928.
Q. What is your business or profession? A. Eye, ear, nose and throat work; physician and surgeon.
Q. Have you been practicing that profession in Klamath Falls? A. Yes.
Q. For how long? A. I have practiced in Klamath Falls since December of 1928, and began practicing in 1919.
Q. Where did you practice before 1928? A. Grants Pass.
Q. Grants Pass? A. Yes.
Q. What medical school or schools did you attend? A. Graduated from Northwestern University, in Chicago, in 1919.

1928 Q. Then did you have an internship? A. Partial; the war was on and we were finishing that—yes, at the old Chicago postgraduate school.

Q. In your practice in Klamath Falls have you ever had occasion to take care of patients who were members of commercial hospital associations? A. Yes.

Mr. Marcus: I object to any testimony along these lines, on the same ground as stated with respect to the testimony of Dr. Durno.

The Court: The same ruling. The testimony will be admitted subject to the objection.

Mr. Jaureguy:

Q. I don't know whether you answered that question or not? A. Yes, I have.

Q. Over what period of time has that covered? A. Not only there, but it was true back in 1919, going on into the thirty-first year, I mean.

Q. From 1919 up to the present time you have done that? A. Yes.

Q. Has there been any difference in the method of your handling those cases, say, from 1919 to 1940 as distinguished from since 1940? A. Would you repeat the question?

Q. Has there been any difference in the method
1929 of your dealing with commercial hospital associations, as distinguished between the years before 1940 and those after 1940? A. Not much difference in my handling of it as their handling of me.

Q. Tell us, now, your experience from the time you started out to, say, 1940? A. Well, in the old days, when we paid $15 a month rent for our office and $18 for a house, when I first started, we would send in our reports and receive an answer saying, in many cases, that the man had left the employment and it was impossible to pay the bill without getting a sign-off of his record.

Q. A sign-off of his record? A. Yes, or some such reply; never got any compensation whatsoever for the work done.

Q. Were there many cases then where you did not get paid? A. It was a distressing number at that time when I was trying to get started.

Q. As the years went on did that condition improve? A. Well, I think gradually, perhaps; the greatest change took place with the competition—as competition from our own groups developed.

Q. Before you come to that phase of it, Doctor, in the days before 1940 was there what we call an open-panel system or was there a closed-panel system? What I am
1930 getting at is, did all the doctors in Klamath Falls handle patients or were there just a group of them that handled those cases? A. Well, there should be a further breaking down there because my first remarks applied to 1919 to 1926, when I quit general practice and went away to specialize in nose and throat.

Then in 1928 I went to Klamath Falls and pursued my specialty, and at that time, for some thirty-odd years in Klamath Falls there had been individual doctors' contracts—one, two or three or four doctors took a contract with one company and another company, and so on, so there wasn't a free choice of physicians at that time.

Q. What hospital associations were operating down in Klamath County at that time? A. You mean in Klamath County from 1928 on?

Q. Yes. A. I couldn't give you that too accurately because I was not interested in that in that early stage. I accepted an appointment on one or two of the individual contracts and took care of them along with my routine office work.

Q. What hospital associations were involved there? A. I can't recall just—you mean locally?

Q. Well, either locally or statewide? A. Well, just how much National or Industrial or any other organization had locally in the first years—I was a stranger there and I don't know; but I do know of the contracts held by private physicians.

1931 Q. Were there any complaints by doctors of Klamath County of this closed-panel system? A. Yes. It was a constant source of irritation.

Q. At any time was there any change in that system of the closed panel? A. Up until 1940; you mean to say?

Q. I am asking you whether there was any change up to 1940. I will ask you that, yes. A. Contracts were solicited back and forth by various doctors and by various companies. Some companies wanted a certain doctor or certain doctors and others wanted other doctors and it was batted back and forth for several years.

Q. In 1940 was there a change in that system? A. It was unsatisfactory to the men and to the doctors and had been, I think, for a number of years, the old system, and so those of us who were on some of the closed systems, as well as those who were not privileged to serve these others, voluntarily got together and said that we will form an organization which later got the name of Klamath Medical Service Bureau, and we would have a manager and let the Service Bureau go into business and get their business in the—in open competition, wherever they found it, including everything in the district, free and open competition, value received for services rendered.

Q. Then did you have an agreement with respect to the contracts the individual doctors had, that were then

1932 in existence? A. Well, many of us took this position: That, so far as telling the employers for whom the different doctors had worked that we were not willing to work for a number of years for the same group, to say, "We have got an organization of our own; we won't

work for you any more—" Instead of taking that position, we had the Klamath Medical Service Bureau.

Mr. Marcus: May I interrupt? The witness is using the word "we" and I am getting a little confused. I would like to ask that he be required to state what he knows of his own knowledge, and I would like to know what he is referring to when he says or uses the term "we."

A. The Klamath Medical Service Bureau.

Mr. Marcus: I would like the witness to be confined, your Honor, to stating what he knows. I don't know whether he realizes that or not.

The Court: I think he does. Tell what you know.

Mr. Jaureguy:

Q. Were you trying to tell us what you know or what you imagined? A. Well, I was—

The Court: Go ahead, Mr. Jaureguy.

Mr. Jaureguy:

Q. I think you were telling us the arrangements that were worked out with respect to the contracts that the various doctors had, closed-panel contracts, where just one or a small group of doctors took care of them. Just
1933 go ahead on that. A. Well, as I was stating, once we organized the thing—I think we opened for business January 1, 1940, if I recollect correctly—this organization was at liberty to acquire in open competition any business available in the district including—I mean, it took everything—it didn't make any difference whether some members of the Klamath Medical Service Bureau held a contract or not—whether the Klamath Medical Association held a contract or not, the Klamath Medical Service Bureau was at liberty to acquire that business, and they were welcome to it, as far as the individual members on the closed system were concerned.

Q. What about any future closed-panel agreement that might be made by the doctors of Klamath Medical Service Bureau? A. Well, if they wanted to belong to the Klamath Medical Service Bureau, we had an agreement before they joined, or if they joined, that so long as they belonged to the Klamath Medical Service Bureau they were not to have individual groups, and go out and solicit business, unless they ceased to carry out their agreement with the Klamath Medical Service Bureau.

Q. That is, any contract that might be gotten in that district, either by doctors or by hospital associations, would have to be on the open-panel system? A. You are referring to the members of the Klamath Medical Service Bureau?

1934 Q. Yes. A. State the question again.

Q. That thereafter any new contracts that might be written in Klamath County, either by doctors or by hospital associations, no member of the Klamath County Medical Service Bureau would service them unless they were open to all doctors? A. That is right. When we signed up to be a member of the Klamath Medical Service Bureau we agreed that if we did work for any concern the other doctors, the other members of the Klamath Medical Service Bureau, would have an equal right to service members of that group. The plain effect of the whole thing was to open up again free, unobstructed practice of medicine.

Q. Was that arrangement put in written form? A. Yes, sir.

Q. Where is it? Have you it? A. I think you will find that in the agreement for membership into the Klamath Medical Service Bureau.

Mr. Marcus: Your Honor, that is not the best evidence. If there is an agreement, let the defendants put it in.

Mr. Jaureguy: Well, you have got it there. Give it to us. We are asking for the bylaws of the Klamath Medical Service Bureau. I can give you the number of the exhibit any moment. It is No. 1152.

Exhibit 1152 is the bylaws of the Klamath Medical Service Bureau and Article XV reads:

1935 "No individual member shall make a new contract for his services with any other hospital association except that contracts in existence at the time of the adoption of these bylaws may be performed and extended or renewed from time to time as long as the agreement is satisfactory to the parties thereto. If any other hospital association shall hereafter list any member as its physician at Klamath Falls, Oregon, or elsewhere, then such member, before doing any work thereunder, shall require that such hospital association shall likewise list as physicians to such association, every other member of this bureau."

Is that what you had reference to? A. That is correct.

Q. Now, the Klamath Medical Service Bureau was organized, I think you said, in December, 1939, and started business in 1940? A. I think that is correct.

Q. What was the purpose of the Klamath Medical Service Bureau? A. It was organized for the purpose of giving the working man a free choice of physicians, such as he had never enjoyed before, and he could pay his—

Mr. Marcus: I object to that, your Honor, as calling for a conclusion of the witness, and attempting to insert a little prejudice in this case.

The Court: Overruled.

1936 Mr. Jaureguy:

Q. Doctor, did you and the other doctors discuss the matter of forming the Klamath Medical Service Bureau before you formed it? A. All during the month of December of 1939.

Q. Did you discuss the reasons why such an organization should be formed? A. Very vehemently.

Q. The reason you have given, is that the reason for forming it? A. That is right.

Q. Is the Klamath Medical Service Bureau still in existence? A. Yes.

Q. Has it been operating ever since? A. Yes.

Q. Selling prepaid medical care contracts throughout Klamath County? A. Yes.

Q. Could you tell us approximately what proportion of the doctors in Klamath County are members of the Klamath Medical Service Bureau? A. I think all but one. There were two when we began and I think only one now that does not belong. I am not positive of that, but I think that is approximately correct.

The Court: How many doctors?

Mr. Jaureguy:

Q. How many doctors would that be? A. I think there are forty-some now.

1937 Q. If I said forty-three as of May, 1948, would that be about right, do you think? A. I think so.

The Court: What territorial limits?

Mr. Jaureguy:

Q. What are the territorial limits of the Klamath Medical Service Bureau? How far out do you go to write contracts? A. We confined it to our Klamath Falls branch

or district at first. I think we never took anything from Lake County. Lake County later organized their own. I don't know of anything outside of Klamath County.

Q. You did not go over into Jackson County or any of those counties? A. No.

Q. Just Klamath County? A. The Klamath Basin, we like to call it.

Mr. Jaureguy: Yes.

The Court: Do you cross the state line?

A. We do no business outside of Klamath County except as someone might come in from the outside and want to take it on.

Mr. Jaureguy:

Q. At one time do you recall whether your organization corresponded with the Insurance Commissioner of California as to whether you could go down there and write contracts? A. That was all handled by the business
1938 manager, and he was a very active man. He was out after business. Just how much correspondence he had outside, I never followed that too actively.

Q. In addition to writing these contracts and taking care of these patients, has your Bureau, the doctors composing this Bureau, made any investments for the purpose of caring for patients? A. Well, under the old system one doctor owned one hospital and one the other, so, after we had been in business for a time, to better care for the obligations we had made, we purchased the first hospital, the one that had been privately owned.

Q. What was the name of the one hospital? A. That was the Hillside Hospital.

Q. What about the other hospital? A. I can't tell you just how many years later. The other hospital was offered to us for sale, for purchase by us, so we purchased the second hospital.

Q. So that now this organization of doctors, the Klamath Medical Service Bureau, owns both hospitals in Klamath Falls? A. That is right. You might say all the doctors together own it.

Q. Are there any other hospitals there in Klamath Falls? A. There are rest homes or whatever you call them. I can't tell you just how much they had. I haven't paid any attention to that.

Q. Do they also own some kind of a hotel or some-
1939 thing in connection with a hospital? A. Well, we had to buy that because it was all the same building.

Part of the hotel was the Klamath Valley Hospital, I believe it is called.

Q. You still own the whole building? A. Yes, own the whole building, including that small hotel.

Q. So you are in the hotel business, too? A. Well, we are, except that it works this way: The nurses have a place to live, just the same as if you would have a nurses' home here or for maternity cases coming—if a maternity case comes from a hundred miles away, they have a place to stay before or after entering the hospital, and so on. It works out very nicely.

Q. Do you know how much of an investment has been made by doctors in those hospitals and in that hotel? A. Well, the first hospital cost $100,000; the second one, $200,000.

Q. So you have a total of $300,000 investment? A. That is the first investment. The improvements—we have really two nice hospitals now and it cost a lot of money to make them nice.

Q. This $300,000 is exclusive of the improvements put on? A. That is right.

Q. You put on the improvements in addition? A. Yes.

Q. Do you think the hospital facilities and facili-
1940 ties for medical care are better now than they were when you organized in 1940? A. I think they are scarcely comparable in any way. I think they have improved tremendously.

Q. Do the commercial hospital associations still have business in Klamath County? A. I think so.

Q. Where do their patients go? A. To our hospitals.

Q. That is, you admit patients from the commercial hospital associations to your hospitals? A. Certainly. We are in the hospital business and private patients—we are glad to have the revenue to keep the hospital going.

Q. Is there any discrimination in running the hospital as between private patients and Klamath Medical Service Bureau patients and patients of commercial hospital associations? A. Well, I have been out of active participation in board meetings and so on. I am no longer on the board; have not been for a couple—for two and a half years—but, as far as I know, we are glad to get the business.

Q. What about the doctors in Klamath Falls since the organization of the Klamath Medical Service Bureau in their caring for patients who are members of commercial hospital associations? A. They have never been excluded, to my knowledge.

1941 Q. That is, they continued to take care of them?

A. Yes.

Q. Do you know whether doctors generally take tickets or not? A. I think that is an individual matter. We only prescribe rules that the doctors of the Klamath Medical Service Bureau shall follow in regard to their Klamath Medical Service Bureau membership. What they do as individual doctors is their own business. We do not try to regulate a professional man's behavior or his business outside of what he agrees to do in the organization.

Q. You are abstaining from trying to regulate doctors. Does that extend to his taking tickets or sending bills to a hospital association or otherwise cooperating with them? A. That is none of our business.

Q. Has that been true right along in Klamath County? A. As far as I know. I don't know—there is nothing in the records that shows any effort on the part of either the Klamath Medical Service Bureau or the Klamath County Medical Society to tell a man what he shall do or what he shall not do, except as his membership agreement does.

Q. And that is with respect to caring for patients? A. That is right.

Q. What you have just said, does that extend back since you have been in Klamath Falls? A. That is right.

1942 Q. Has any other medical society, as far as you know, ever tried to tell the doctors in Klamath County what their operations should be or what their relations should be with the commercial hospital associations?

Mr. Marcus: I object to that question, your Honor, unless it refers to this doctor's own experience.

The Court: He may answer. As far as you know, Doctor.

A. As far as I know, they have not interfered with any man's private opinion.

Mr. Jaureguy:

Q. I don't know as I asked you whether you ever had any offices, whether you ever held offices in any medical society? A. That covers thirty years,—a little over thirty years. I think I was President of the Southern Oregon Medical Association twice, once when I lived in Grants Pass, and I also was President of the Josephine County Medical Society at one time. Don't ask me for dates, because I don't remember.

Q. Except that was before 1928? A. The same is true after I moved to Klamath County. I was President of the

Klamath and Lake County Medical Society, when they were together, and then later President of the Southern Oregon Medical Society again. I think that is correct.

Q. Have you ever held office in the State Medical Society? A. I think I was a delegate or something or fourth or fifth vice-president or something at one time. I can't remember.

1943 Q. Either a delegate or fourth or fifth vice-president? A. Something like that.

Mr. Jaureguy: If your Honor please, that concludes our direct examination. I wonder if we could excuse the witness temporarily and let Mr. Nelson take the stand?

The Court: Is that satisfactory, Mr. Marcus?

Mr. Marcus: Yes.

(Witness temporarily excused.)

1944 DR. RALPH W. NELSON, having previously been duly sworn, was recalled as a witness on behalf of Defendants, and was examined and testified as follows:

The Court: He has already been sworn, I think.

Mr. Jaureguy: Yes, he has testified. Your Honor may recall that I asked if I could question him on certain matters on direct examination, and that is why I am calling him back.

Direct Examination

By Mr. Jaureguy:

Q. Mr. Nelson, I think you have already testified you were Manager of the Portland Sanitarium & Hospital. A. Yes.

Q. And that at one time at least you were Chairman of the Portland Council of Hospitals? A. Yes. I still am.

Q. You still are? A. Yes.

Q. Doctor, when you were on the stand before you told us what the organization of the Portland Council of Hospitals is, the nature of the organization that it is. I think you have told us that. A. I don't recall how much we went into that. It is a voluntary conference group of hospitals.

Q. They confer about general matters of policy and problems of the various hospitals in Portland? A.

1945 Yes, that is the purpose of the organization.

Q. I would like to read to you from Defendants' Exhibit 2733. I am going to read this rather than to show

it to you, because I would like to have it in the record, and I have not read in many things in the record so far.

This is a letter written by you to Providence Hospital, under date of December 27, 1943 on the letterhead of the Portland Council of Hospitals.

"Gentlemen: The hospitals are confronted with a problem which is growing to rather serious proportions, and the Council has instructed me to bring it to you, in the hope that we may be able to bring about a more satisfactory condition in regard to the difficulty that we face.

"There are a great many patients presenting themselves at the hospitals for admission, representing themselves to be covered by a contract of insurance which will provide for their hospital expense. Then after a period of several weeks, in quite a number of cases, the hospital is advised that the patient was not under coverage for one reason or another. It is then too late in most instances for the hospital management to do anything about it, and very often the result is that the hospital is unable to collect from any source for its services.

"The position of the hospital would be much better if at the time of admission, or shortly thereafter, it could know the true status of the patient relative to the insuring agency. The problem is becoming so serious to some of our hospitals that it has even been suggested that it might be necessary to adopt the policy of holding the patient personally responsible in all cases and requiring payment from him; then refunding him any amount realized from the insurer. The Council has advised against this course, feeling that if the matter is properly presented to the insurers, a way can be found by which the patient can furnish evidence of the liability of his insurer.

"We are therefore, as a group, asking that you give careful study to this problem. From the hospital viewpoint, the thing that is needed is either that the patient be supplied with some form of identification that will prove his eligibility upon admission, or that by contacting your office, his status may be cleared at once upon admission. It is the desire of all our member hospitals to co-operate with you, and we feel sure that by thus bringing the problem to your attention you will devise some method of helping us with it. We will be glad to confer further with you, either individually or through our Council, to the end that we may get a method worked out.

1946

"Yours truly, R. W. Nelson, Chairman, Portland Council of Hospitals."

1947 The experiences you relate in the letter of December 27, 1943, do they reflect the experiences that you had at the Portland Sanitarium & Hospital? A. They reflected the experiences we were having at that time.

Q. Did the Council discuss this problem further and try to determine what to do about it? A. Yes, it was a matter of discussion on quite a number of occasions.

Q. Did the difficulty that then existed continue? A. Yes, it has been a persistent problem with us; it is not nearly so much now because these insurers have—

Q. First, if you don't mind, I would like to confine ourselves to 1943, 1944 and 1945. Did the Council at any time adopt any policy following out the suggestion that they would hold the patient personally responsible and not, in effect, take tickets of the hospital associations? A. Yes, we discussed that seriously and, if I remember correctly, we even went so far as to decide that we would adopt such a policy. Of course, my memory that far back is not entirely clear.

The Court: What phase of the case does this bear on?

Mr. Jaureguy: This bears on the Government's contention that the Medical Society endeavored to coerce hospitals into not accepting tickets from hospital associations. They had a memorandum written by a ghost writer—they couldn't tell us who wrote it—and it had no signa-

1948 ture to it. It was found in the National Hospital Association files that they produced, and it was shown to Mr. Nelson, and he testified some doctor on some occasion had suggested some such policy.

Mr. Marcus: Your Honor, I think I ought to comment on that statement.

Mr. Jaureguy: I should think you would.

Mr. Marcus: In the first place, I don't see what reference it has to our contention that defendant doctors coerced hospitals, for during a certain time or period these hospitals themselves contemplated doing that very thing. One has no relevance to the other. Second, with respect to this ghost-written document, the record shows that on direct examination, when I asked this witness about it, he stated that it was correct except in two instances.

Mr. Jaureguy: Your Honor, nevertheless, it was found in the files of the National Hospital Association, and that is where counsel got it.

Mr. Marcus: Well, now—
Mr. Jaureguy: Everybody agrees on that.

Q. I want to read Defendants' Exhibit 2734, a letter dated July 23, 1944, seven months after the last exhibit. This is on the letterhead of the Portland Sanitarium & Hospital and written by you, Mr. Nelson, to Sister Rose Imelda, St. Vincent's Hospital.

1949 "Dear Sister Imelda: I wish to call your attention to the fact that no formal notice has been given the various hospital insurance contractors relative to our recent resolution under which we plan to discontinue credit dealings with these organizations on September first. You will probably recall that after this resolution was passed there was some discussion as to the manner of giving notice and it was thought best not to sent out written notices to these people, but that each hospital should deal with the matter itself in its relations with the various contractors.

"Verbal notice has been given the Oregon Physicians' Service through its president and three other members of its board of trustees. So far as I know, no notice has been given any other contractor.

"Sincerely, R. W. Nelson, Chairman. Portland Council of Hospitals."

Does that refresh your recollection as to whether you did go further in carrying out the suggestion that you referred to in the preceding exhibit? A. We did, in our Council, pass a resolution or something to that effect, that after a given date we would recommend to the hospitals that they discontinue extending credit to these associations, unless or until some arrangement could be made whereby they could let us know whether these people were insured or not. That was the bone of contention in

1950 the thing.

Q. Do you know who it was that gave notice to the Oregon Physicians' Service that you would not extend credit to them? A. I think I did that myself.

Q. Do you know whether notice was ever given to any other—to any commercial hospital association to that effect? A. I don't know. Each hospital was expected to give its own notices. I don't recall that I gave any notice in behalf of my own hospital to any other.

Q. Was that plan ever put into effect? A. No.

Q. Not to extend credit? A. No; never was put into effect.

The Court: Why don't you ask what the doctors had to do with it? That is the charge, isn't it?

Mr. Jaureguy: That is correct. I am taking it step by step, your Honor, and that is the next step.

Q. What, if anything, did the doctors have to do with the adoption or the proposed adoption of that policy? A. Nothing at all.

The Court: Why did you pick on OPS?

Mr. Jaureguy:

Q. Yes. A. Well, in my own case at least, our hospital had extensive dealings with OPS. We have almost no dealings or very little dealings with so-called commerical associations, and when I took the matter up with OPS,
1951 as I recall now, they responded with the first real effort to help us solve the problem, and it looked as though they were getting the thing done constructively, and there wasn't any use to carry it any further.

The Court: What does one of the 46,000,000 people that have this kind of a hospital policy do now? When he goes to a hospital, does he identify himself, or does somebody for him identify him as being a subscriber to one of these plans? How does that work?

A. Most of them now have an identification card from the organization, from the Blue Cross or OPS or if they do not have a card it is easy now to call up the office of the company and check and in a few very minutes they usually give the information.

The Court: Whom do you bill?

A. We bill the Oregon Physicians' Service or whoever the insurer is.

Mr. Jaureguy:

Q. If it is the National Hospital Association, do you bill the National Hospital Association? A. Yes.

Q. If it is the Industrial Hospital Association, do you bill the Industrial Hospital Association? A. Yes.

Q. If it is the OPS, you bill the OPS? A. That
1952 is right.

Q. If it is the Blue Cross, then you bill the Blue Cross. Your hospital is a member of the Blue Cross, I believe? A. That is right. The process is exactly the same with any organization, whether it is the Blue Cross

or the OPS or any of the others, as far as the billing is concerned. Q. In the former days, why couldn't you call up the National Hospital Association, when a patient came in, and ask them about the patient? A. We couldn't get any satisfaction. They just didn't know. They couldn't tell whether he was insured or not.

Q. Is it true, as set forth in your letter which I read a few minutes ago, that sometimes you would not learn until weeks after they had left the hospital that they did not have coverage? A. That is quite often true.

The Court: You say you have a contract with Blue Cross or any of these other organizations?

A. We have no contract with any of these organizations.

The Court: Don't you get a certain regular revenue from them? Mr. Nelson, don't you get a certain regular revenue from Blue Cross?

A. They pay the patient's bill, that is all.

The Court: That is all?

A. That is all.

The Court: You don't get any regular revenue from the Blue Cross, then?

1953 A. No.

Mr. Jaureguy:

Q. Do you know how the OPS operates, the Oregon Physicians' Service, with the doctors? A. Their relations with the hospital, you mean?

Q. No, do you know how the OPS takes care of paying doctors? A. Yes.

Q. Is that a similar method to the method by which the Blue Cross takes care of its hospital bills? A. It is similar in one respect. The Blue Cross pays the hospital bills. In asking whether I am familiar with the relation between the doctors and OPS, as to their paying them, you are asking whether—how much money they have and so forth?

Q. I am asking whether that relationship is similar to the relationship between the hospital members of Blue Cross and Blue Cross? A. It is similar except that Blue Cross pays the bill. Their financial status is sufficiently strong. They do not have to pay us a percentage.

The Court: Mr. Nelson, what advantage is it to the hospital to have these prepaid plans? What do you get than

you otherwise have got? Nothing that you did not get before?

A. When we were dealing with private patients?

The Court: Yes:

A. The difference is that there are many patients who do not have the money in their pocket; they are working men or poor people, and we often had to put many ac-
1954 counts on the books and wait a long time for payment or perhaps never got paid. Where they are insured, there is an insurance organization that pays the bill, and we have greater assurance of being paid.

The Court: I always had an idea you got some part of the money between the amount that these forty odd million people pay in and the amount of the hospitalization that they had to undergo. You say you don't though. I am taking the Blue Cross figures that I have read somewhere. They get so many dollars a month from so many people.

A. Yes. The Blue Cross collects a premium.

The Court: Oh, yes. Okeh. That is on an actuarial basis?

A. Yes.

The Court: Supposedly, they take in more money than they have to pay out, supposedly?

A. Yes.

The Court: I always understood the hospital got a share of it.

A. No. The Blue Cross is a non-profit organization.

The Court: I will not go into that either. I have heard that argument before. I heard an insurance company the other day, with $1,600,000,000 of assets, argue that.

A. No, our bill is paid. The Blue Cross pays the hospital bill and nothing else.

The Court: That is all there is to it?

1955 A. That is right.

The Court: Take your recess.

(Recess.)

Mr. Jaureguy:

Q. Do you know whether the other hospitals follow the same procedure that your hospital does in dealing with the National and Industrial Hospital Associations and OPS? A. Yes.

Q. And the other prepaid plans, for the care of patients? A. As far as I know, they do. I think they all do.

Q. In the old days, did you have any difficulties with the commercial hospital associations, other than not being able to find out if patients were covered by the commercial hospital association? A. Yes, we used to in days gone by; our dealings were very unsatisfactory.

The Court: I still don't see what issue that bears on.

Mr. Marcus: I do not either, your Honor.

The Court: The issue is that these doctors have tried to use the hospitals to make trouble for the commercial associations.

Mr. Jauerguy: Yes, that is an issue.

The Court: Now, this makes the commercial hospital associations look bad in another respect.

Mr. Jaureguy: And that is another reason.

The Court: Yes, but that is not an issue in this case.

Mr. Jaureguy: Well, your Honor, they have
1956 charged that the hospitals have been coerced into not taking tickets, and there is evidence that one little hospital in the state—that is this Eugene Hospital, the Sacred Heart—there is evidence that the Sacred Heart for a time did not take tickets. This, of course, is rather remote.

The Court: I will exclude it.

Mr. Jaureguy: All right.

The Court: In fact, I am going to begin to cut down on quite a few things. I feel it coming on.

Mr. Jaureguy: Just let us know, your Honor.

You may take the witness.

Cross Examination

By Mr. Marcus:

Q. You have been on the stand before, Mr. Nelson, and I do not intend to keep you very much longer.

First, with respect to this letter which Mr. Jaureguy interrogated you about, is it not true that relates to a matter entirely different from the incident which I went into with you when you were here last fall? A. They are entirely separate incidents, yes.

The Court: What did he say, Reporter?

(Answer read.)

Mr. Marcus:

Q. Mr. Nelson, these troubles the hospitals were having in 1943, with respect to finding out who were
1957 patients of the various prepaid medical care organizations, in the instance of your hospital; I assume that was just as much true of OPS as with respect to the other prepaid medical care organizations, is that not so? A. Just the same situation, excepting the Blue Cross. We never had that problem with Blue Cross because they were provided with identification always.

Q. I would like to clarify one thing as a matter of information, because the Court has referred to it a few times, and there have been other references, and that is just as to what Blue Cross covers. I would appreciate it, if you would correct me as I state what I understand the Blue Cross coverage to be.

I understand it to be hospitalization coverage, plus medical service in connection with that hospitalization. A. No, the Blue Cross has not, until very recently, provided anything other than hospital coverage. It does not provide medical coverage. Recently, however, Blue Cross has extended—when I say recently I mean within the last one or two years. It has extended another contract of insurance providing a hospitalized patient with a cash reimbursement which he may use to pay doctors' bills. That is a separate contract, however, from the hospitalization contract.

Q. I am substantially correct in stating that the present medical care is in connection with a hospitalized patient? A. That is right.

1958 Mr. Marcus: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. Would you correct me if I am wrong? A person in order to take advantage of Blue Cross coverage can accept merely the hospital part of it or may accept both the hospital and medical hospitalization coverage? A. Yes, they are two separate contracts, with two separate premiums to pay. He can accept the hospitalization alone. He cannot accept the medical alone.

Mr. Jaureguy: That is all. Thank you.

(Witness excused.)

1959 DR. RALPH W. STEARNS, a witness on behalf of Defendants, having been previously duly sworn, resumed the stand and further testified as follows:

Cross Examination

By Mr. Marcus:

Q. Doctor, as I understand it, you were in Klamath Falls for a certain period, and then you removed from Klamath Falls and then subsequently came back. It that correct? A. No, that is not correct.

Q. What was the history of it? That was my mistake, evidently. A. When I first came out of school, graduated from medical school, I practiced for a time in Grants Pass, and then I went away for two years and specialized in eye, ear, nose and throat, and then came back and located in Klamath Falls.

Q. When was that, about? A. In 1928; December, 1928.

Q. You testified that you had dealings in this period with reference to various hospital associations, is that correct? That is, in the period between the time you came back, that is the time you came back to Klamath Falls and subsequently you had dealings with hospital associations? A. I treated patients under that coverage, yes.

Q. Well, I suppose you took tickets, did you not?

1960 A. Yes.

Q. Could you tell us which particular hospital associations? A. I think most any hospital association—any one that was covered or had some prepaid medical plan. The office girl always looked after that and it was immaterial. If they satisfied her, it was all right with me.

Q. You do not actually remember, do you, whether or not you had dealings with, say, the Prudential Hospital Association, as distinguished from the National and Industrial, do you? A. I remember National and Industrial, and then there were some others that I don't know. I took care of the U.S. Bureau of Reclamation, and the Indian Service, and any other association—if a man said he had insurance, the girl filled out a paper and that is all there was to it.

Q. Around 1940 were you doing much of that type of work? A. I was doing some; just how much or how little I wouldn't know.

Q. Isn't it true, Doctor, that actually with respect to the time element it might not have been prior to 1940 that the hospital associations opened up their panels? A. Opened up their panels?

Q. On direct examination for some reason defense counsel took the year 1940 as the dividing point. I am asking you whether that dividing point, as far as you know, might not have occurred prior to 1940? A. I don't know what dividing point you have reference to, sir.

1961 You stated, I believe, that there was some difference with respect to the attitude of the hospital associations as of one period, and as of a subsequent period. A. Oh, yes. It used to be—Do you want to go clear back to the beginning? In 1919 it was worse. I think it improved some through the years and there was some improvement preceding 1940, as you said.

Q. Now, Doctor, you are a participating physician of OPS, are you not? A. Yes. What do you mean? I serve their coverage, yes.

Q. Have you ever been an officer or trustee or director of OPS? A. Yes, I was made a trustee of OPS.

Q. It is true, is it not, Doctor, that the Klamath Medical Service Bureau is an affiliate of OPS? A. It depends on what you mean by affiliation. We take care of OPS patients and they take care of ours, if they are in the territory.

Q. You know, do you not, that the Council on Medical Services of the American Medical Association has listed your organization as affiliated with OPS? Do you know that?

The Court: Isn't it your position on the pleadings that the Oregon State Medical Society and OPS have done something restrictive of the Klamath concern?

Mr. Marcus: Our position on that, your Honor, is that there has been an allocation of territories, and it

1962 has been of the defendants, both OPS and local organizations. One element of proof in that is the fact that where there is relationship between these organizations there has been great hesitancy on the part of witnesses so far to admit that they were affiliated with OPS, and I am going to bring in at this time, with this witness, some additional proof with respect to that particular element of the case.

Q. This particular question, Doctor, is whether you are aware that the Council of Medical Service of the AMA has

listed your organization as being affiliated with OPS? A. Well, would that necessarily make it so?

Q. I am asking you, Doctor, whether you are aware that the AMA has stated that your organization is affiliated with OPS? A. No, I was not aware of the fact.

Q. You have some familiarity, I suppose, with your own contract, don't you? A. Contact?

Q. Contract; your medical contract? A. Not too much any more, no.

Q. You are aware of this provision which I am reading from Exhibit 1155, are you not? This is the full coverage medical and hospital contract of the Klamath Medical Service Bureau.

With respect to "specialist" it reads:

"The expense of services of K.M.S.B. staff specialists or specialists of other Oregon affiliated bureaus will
1963 be borne by K.M.S.B. upon the recommendation of the attending K.M.S.B. staff physicians and the approval of the committee appointed for this purpose."

Those are not words I made up. It is in one of your contracts. Are you familiar with that provision? A. Well, what is the date of that, sir?

Q. It is signed by Dr. Rugh, as President.

It is true, is it not, that he has been president in the last few years? A. I am not familiar with that contract in any way because I have not been an officer for two and a half years.

Q. In other words, you are not familiar with the contract? A. That has been written since I was in an official capacity.

Q. Do you know whether the same provision appears in your early contracts? A. No, sir; I would not recall.

Q. Doctor, I show you Exhibit 1153 and ask whether, to the best of your knowledge, this lists the officers or the board members of the Klamath Medical Service Bureau for the years indicated? A. If there is anything wrong with it, I do not detect it.

Q. As far as you know, that is correct? A. As far as I know, yes.

Q. Doctor, you are one of the doctors who helped form the Klamath Medical Service Bureau? A. That is
1964 true.

Q. Did you seek the advice of the Oregon State Medical Society at that time? A. Not primarily, no.

Q. Well, I am asking you a question, Doctor. Did you

seek the advice of the Oregon State Medical Society at that time with respect to your new bureau? A. They may have offered advice and so on, but not primarily. We had our own attorney.

Q. You had your own attorney? A. That is right.

Q. You did not have the attorney for the State Society review your organization? A. Just how much or how little they reviewed it I don't know, because we had our organization and had our own legal counsel, and were open for business and went ahead.

Q. You cannot say that you did not have you own setup reviewed by the legal counsel for the State Society, can you? A. No. We organized ours much on the same principle as the Salem organization.

Q. I wonder if you got my question? My question was: You can't say that your group or your bureau did not obtain the advice of the legal counsel of the State Society, can you? I want to find out whether you have any distinct recollection on that point or not. A. Well, I simply restate the fact that we had our own counsel and just how little or how much advice we sought or accepted from the State I would not be able to say.

1965

Q. Who is the manager of your Medical Service Bureau? A. Joe Hicks.

Mr. Jaureguy: I think he may have misunderstood. Did you say who is or who was?

Mr. Marcus: I asked him who is.

A. Who is? Now?

Q. Yes. A. A man by the name of Brown. I don't recall his initials.

Q. Who has been or was the manager prior to Mr. Brown? A. First, for seven and a half years, Joe Hicks was the manager.

Q. When did he leave? A. I can't tell you accurately. It might have been at the end of seven and a half or eight years. I don't recall exactly.

Q. Within the last few years or the last year or so? A. Yes, that is right.

Q. Doctor, in connection with the running of the Klamath Medical Service Bureau it has been true, has it not, Doctor, that questions of whether doctors associated with the Bureau are entitled to the fees they have requested have come up? A. State that again, please.

Mr. Marcus: Will you read the question, please.

(Question read.)

1966 Q. Your group has disagreed at times, has it not, with the fees asked by particular doctors in your group with respect to particular patients? A. That might occur at any time. It has and probably always will.

Q. There have been times that your group has thought as a fair proposition those fees should be cut; that is, the fees requested? A. We have always paid a hundred per cent of our fees from the first day we operated.

Q. I am talking about now, Doctor. As to a bill sent in by one of your members that your group has disagreed with, hasn't that been true that there have been instances where that has happened, when a bill has been cut down? A. Oh, it has to be adjudicated in some way so that you have fairness.

Q. I am asking you a question. Hasn't it happened in some cases that a bill has been cut down? A. Oh, certainly; always will.

Q. Doctor, isn't it true that actually, in so far as the subscribers are concerned, your group has a closed panel? A. With the exception of emergencies, if they are covered and insured with the Klamath Medical Service Bureau, they are entitled to the services of the Klamath Medical Service Bureau; if they are not able to obtain them,

1967 they can be taken care of by other doctors, but those doctors are compensated by the Klamath Medical Service Bureau.

Q. It is true, is it not, Doctor, that under your contract with your subscribers they must, except in an emergency, be treated by physicians associated with your group, unless that group decides to make exceptions? A. Members of the Klamath Medical Service Bureau, meaning the patients, must seek the services of the members if such services are available.

The Court: What is the gross down there? You had a statement of some $290,000 the other day for one of the other local associations. What is it down there?

Mr. Jaureguy: The 1948 gross of the Klamath Medical Service Bureau was $831,553, quite a lot better than the Coos Bay. Do you want the disbursements?

The Court: Not unless you want to read them.

Mr. Jaureguy: I have not asked the witness, but I am assuming that figure includes the income from the hospital.

Mr. Marcus:

Q. Your recollection—you recall over this period there has been a Bureau of Medical Executives and those affiliated groups which have met from time to time. Have you ever attended such meetings? A. You mean representatives of affiliated groups?

Q. Representatives of doctor-sponsored plans, your plan and these other groups which are at least listed in this red pamphlet as affiliated with OPS. They
1968 have met from time to time in meetings, as I understand, the executives, the executive heads of the various groups.

My question is whether you have ever attended such a meeting? A. I do not believe in the last three or four years.

Mr. Marcus: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. If a member of the Bureau, somebody entitled to the services of the Bureau, is sick in Klamath Falls and wants a doctor, that person may go to any doctor in Klamath Falls, I think you said, except one? A. They can go to any doctor if they are in trouble. Then our association takes care of the bill; but he is supposed to get hold of a member, if he is available, and it does not make any difference whether he is in Klamath Falls or Timbuktu—he can be in New York, Miami or Chicago, and he can go to a doctor, and we take care of the doctor.

Q. If it is not an emergency and he wants to make a permanent choice, he has the choice of everybody but one? Did you say there is one doctor in Klamath Falls? A. I think there is only one left that is not a member.

Mr. Jaureguy: That is all.

(Witness excused.)

1969 The court: Does Dr. Rugh want to go back and do you want to put him on today before we quit?

Mr. Jaureguy: I don't want to keep him overnight, your Honor, unless he wants to stay.

The Court: He may not want to stay here. If it were in San Francisco, he would.

Mr. Jaureguy: It is not as cold down there. Suppose you take the stand, Doctor, and we will try to short-cut it.

DR. CHARLES VINCENT RUGH was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Your name is Dr. Rugh? What initials? A. Charles V.

Q. You live in Klamath Falls? A. I do.

Q. How long have you lived there? A. Since 1926.

Q. You are a physician and surgeon? A. I am.

Q. How long have you practiced in Klamath Falls? A. Since 1926.

Q. Has that been continuous? A. Yes, sir.

1970 Q. Of what medical societies are you a member? A. Well, Klamath County and the State Society and AMA.

Q. Have you ever been an officer of any of those societies? A. No. Wait a minute. No, I have never been an officer of any of these societies.

Q. Are you a member of the Klamath Medical Service Bureau? A. I am.

Q. You heard the testimony of Dr. Stearns, did you? A. I did.

Q. Could you tell us in a word or two the extent to which you agree with what he said and the extent to which you disagree? A. I agree with everything he said. I was one of the members who was with Dr. Stearns when we formed the Bureau, and have been on it ever since, and I have been on the Board of Directors twice, I believe. Everything he said is true.

Q. Have you had the same experience or similar experience with hospital associations that he testified he had?

Mr. Marcus: I would like to make the same objection, your Honor, with respect to this testimony, as made with respect to the testimony of Dr. Durno.

The Court: Same ruling. The testimony will be admitted subject to the objection.

Mr. Jaureguy:

Q. Have you had experience with hospital associa-
1971 tions similar to those detailed by Dr. Stearns? A. I have.

Q. Your experience in Klamath Falls during these years has somewhat paralleled his? A. Well, I think it has paralleled his with the exception of the fact, of course, that doing a general practice I have accepted and treated patients, accident patients and other patients, general practice patients, which he would not take.

Q. That would mean you would get more of them than an eye, ear, nose and throat man? A. Well, I would get at least a more varied type.

Mr. Jaureguy: You may take the witness.

The Court: What is the investment you doctors have down there in hospital facilities?

A. What is that?

The Court: What is the total investment in hospital facilities?

A. You mean with the improvements of the last two or three years?

The Court: Yes.

A. I judge around $450,000.

The Court: What percentage of your business would you think comes from subscribers to the Medical Service Bureau?

A. I can't tell you that exactly. I can guess pretty closely, however, with respect of course to the practice of doctors, their fee schedule and so forth. I should judge about
1972 an average of about a third of the income of the ordinary general practitioner would be Klamath Medical Service Bureau tickets.

The Court: I thought it might be more than that.

A. About a third, I would judge.

The Court: You are sure you are getting the figures right?

A. I am just saying I think that is about an average.

The Court: With forty doctors, and $800,000, that is $20,000 apiece.

A. Well—

The Court: If that is only a third, you are getting into big money.

A. That $800,000, of course, includes the income of the hospital and the hotel. I was coming to the hospital part of it. I think the hospital income is pretty well split up, half and half, with prepaid medical plan and private patients.

The Court: Cross examine, Mr. Marcus.

Cross Examination

By Mr. Marcus:

Q. Do you have the same aversion to the word "affiliated" that the preceding witness had? A. I think perhaps that word is a little bit wrong.

The Court: Better be careful. His father was a university professor. Better be careful.

Mr. Marcus: Your Honor, I see that this particular contract that we had before is signed by this doctor, and it contained those words.

1973

A. However, I think that contract with the word "affiliated" in there was purely meant to give as much actuarial benefits to subscribers as possible. I think the word "participation" is the word we are now using in talking with or dealing with other bureaus.

Mr. Marcus:

Q. Doctor, isn't it true that your group, the Klamath Medical Service Bureau, was also affiliated with the Bureau of Economics of the State Society? A. That I have read in articles but I have never understood it and I didn't pay much attention to it. The word "affiliation", as I said before, is not the word that best describes workings between bureaus. "Participation" is a better word. That is what we do, participate with each other.

Q. Let me ask you this: Was your group part of the Bureau of Medical Economics of the State Society? A. I don't know that.

Q. Was it represented on the bureau? A. I don't know that.

Q. Well, Doctor, I have here Exhibit 1151, which contains the minutes of the Klamath Medical Service Bureau for May 20, 1944. It states:

"Motion made by Dr. Rugh, seconded by Dr. Hilton to pay one-half per cent of 1940 income to support of
1974 Bureau of Medical Economics. Motion passed."

What do you understand by that? A. Well, I had forgotten about it. Yes, I remember now the meeting. There was a motion to help all we could, with the developing of the program between the different groups in Oregon so that we could better participate, a group of prepaid plans.

Q. That was in so far as doctor-sponsored plans were concerned, isn't that so? A. That is right.

Mr. Marcus: I think I am going to let you make your train. That is all.

(Witness excused.)

The Court: Do you want a sugar plum and quit now fifteen minutes early?

Mr. Jaureguy: No, your Honor. As I said the other day, it just so happens, at a time like this I would like to read a litle bit. I have one document that I am going to read at this time, if it is permissible, and that is Defendants' Exhibit 2761, on the letterhead of the Insurance Commissioner of the State of California, Wallace K. Downey, Insurance Commissioner.

I don't think we have this in the record. Mr. Marcus has agreed that if J. R. Maloney, Chief Assistant Insurance Commissioner, were called as a witness he would
1975 testify as to the facts stated in this letter.

Mr. Marcus: That is correct.

Mr. Jaureguy: This letter is addressed to Cake, Jaureguy & Tooze, 1220 Equitable Building, Portland 4, Oregon:

"Attention: Nicholas Jaureguy, Esq.

"Re: C. C. Bechtold, National Hospital Association, Portland, Oregon.

Dear Sirs:

"In response to your letter of December 14, 1949, we wish to advise that there has been no change in law or regulations since the letter of this Department to Klamath Medical Service Bureau dated February 10, 1940, which states that any solicitation, transaction or negotiation of insurance in California by a non-admitted insurer is a misdemeanor. This law is as to any other non-admitted insurer.

"Mr. Bechtold has had conversations with several persons in this office off and on over the period of the last several years, the greater number probably with the writer of this letter. These conversations have embraced a number of subjects including admission requirements, policy form standards and legislation. While we have generally been of the impression that residents of California were entitled to indemnities under contracts issued by the National Hospital Association, we have at no time had any 1976 knowledge, evidence or admissions that the latter organization has been actually soliciting accounts in this state in violation of our law. Mr. Bechtold is definitely under a misunderstanding if he has interpreted any such conversations either as express or tacit consent on our part to any solicitation in this state in violation of our laws.

"Very truly yours, Wallace K. Downey, Insurance Commissioner. By J. R. Maloney, Chief Assistant Insurance Commissioner."

Now, I would like to read the letter I wrote to him, in order to complete it.

This is a letter dated December 14, 1949 addressed to the State Insurance Commissioner, Sacramento, California:

"Dear Sir: We are representing the defendants in a case pending in the Federal District Court brought by the Anti-Trust Division of the United States Attorney General's Office against Oregon State Medical Society and others. We wish to call your attention to two items of evidence in this case which apparently are inconsistent.

"On February 10, 1940, Harold B. Haas, Assistant Insurance Commissioner, wrote to Klamath Medical Service Bureau of Klamath Falls, Oregon, in response to an inquiry as to the right of that bureau to solicit accounts in California. The letter said:

'Any solicitation, transaction, or negotiation of 1977 insurance in California without admission in California is a misdemeanor.'

"The letter proceeded to state that contracts executed in Oregon were legal even though the indemnities were extended to California workmen.

"On October 21, 1949, Mr. C. C. Bechtold, President and General Manager of National Hospital Association, an Oregon Corporation, which is a commercial hospital association, testified that though his company has not been admitted to do business in California his agents are soli-

citing accounts in your state. Upon being asked how his company could do this, he said:

'Well, it is a peculiar thing. It is kind of embarrassing for us sometimes. But the Insurance Department down there has been very generous.

'Q. Very generous? A. Very tolerant. They realize that we are doing pretty good work. At least they have told me that. But there is no law in California of the kind we have in Oregon.'

"His testimony continued:

'Q. You mean they permit you to go down there and solicit accounts? A. Yes.

'Q. By that you mean you have not been charged 1978 with violating the law? A. No. No, I had a very nice talk with the Deputy Insurance Commissioner two weeks ago. We are able to qualify and probably will in the very near future.'

"You will notice from the above testimony that the talk which Mr. Bechtold said he had with one of your Deputy Insurance Commissioners was about October 7, 1949.

"We would appreciate learning from you whether a commercial hospital association such as National Hospital Association is permitted to solicit business in California, either with or without qualifying in your state as a foreign corporation; and also whether any such conversation was had between Mr. Bechtold and any representative of your office.

"In the event National Hospital Association may properly solicit business in California, we would appreciate learning whether this represents a change in law or regulations since the letter to Klamath Medical Service Bureau of February 10, 1940, or whether you feel that the methods of operation of the two companies justify a different rule for National than for Klamath Medical Service Bureau.

"Please be assured that this letter is not intended as a criticism of your office.

"Very truly yours, Cake, Jaureguy & Tooze."

Mr. Marcus: Your Honor, while I am quite ready to admit that if the Deputy Commissioner—

1979 Mr. Jaureguy: The Chief Assistant.

Mr. Marcus: —were here he would testify as stated in that letter, I am not admitting at all the relevancy